Explanatory Notes Relating to the Budget and Economic Statement Implementation Act, 2007 and Draft Regulations Relating to Tax Information Exchange Agreements

Published by
The Honourable James M. Flaherty, P.C., M.P.
Minister of Finance

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Preface

A number of tax measures that were announced in the 2007 Budget were not ready for inclusion in Bill C-52 (S.C. 2007, c. 29, received Royal Assent on June 22, 2007), the *Budget Implementation Act, 2007.* Instead, draft legislative proposals to implement those measures were released for public consultation and comment on October 2, 2007 (News Releases 2007-074 and 2007-075). Also released on that date were explanatory notes to the proposals.

The *Budget and Economic Statement Implementation Act, 2007* (the Bill) includes those same legislative proposals, as well as the measures originally announced on July 4, 2007, requiring the disclosure of information by publicly traded trusts and partnerships (News Release 2007-058). In some instances, the legislation has been modified as a result of the consultation process. The modifications to the legislative text mean that there are a few instances in which the explanatory notes, as originally released, no longer correspond to the proposed amendments.

Rather than reproducing the entire collection of explanatory notes of the releases, this document identifies those instances where the original notes do not correspond to the measures in the Bill. Where the amendments and the original explanatory text differ significantly, new text is provided. In other cases, more specific modifications are noted. Those explanatory notes from the October 2, 2007 releases that are not mentioned here can be presumed still to correspond to the provisions of the Bill, although the numbering of the legislative clauses has changed. This is also the case in respect of the July 4, 2007 release.

In addition, the draft legislative proposals released on October 2, 2007 assumed, for ease of understanding, that the measures in former Bill C-33 (now Bill C-10) were in place. As this assumption cannot be made in respect of the Bill, several provisions and their explanatory notes had to be revised, with the concordant introduction of amendments coordinating the provisions of Bill C-10 with those of the Bill.

This document also includes explanatory notes to the provisions in the Bill that implement measures announced in the October 30, 2007 Economic Statement.

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These explanatory notes are provided to assist in an understanding of the proposed amendments to which they relate. These notes are intended for information purposes and should not be construed as an official interpretation of the provisions they describe.

Part 3
Amendments Related to Income Tax

Income Tax Act

Revised explanatory notes to implement remaining Budget 2007 tax measures:

Clause 9

The explanatory notes should be revised by adding the following:

Inclusions

ITA
12

Section 12 of the Income Tax Act provides for the inclusion of various amounts in computing the income of a taxpayer for a taxation year from a business or property source of income.

NISA receipts

ITA
12(10.2)

In 2007, the Government announced the new Agri-Invest program for implementation in 2008. The Agri-Invest program is similar to the net income stabilization account program introduced in 1991 under the *Farm Income Protection Act* ("old NISA"). Although deposits under the old NISA program ended on December 31, 2003, funds in NISA Fund No. 2 could be withdrawn on a taxable basis over a period of up to five years (in annual amounts of at least 20 per cent of the March 31, 2004 balance).

A farmer's Agri-Invest savings account is also a NISA under the *Farm Income Protection Act*. The differences in program design between old NISA and Agi-Invest require amendments to the *Income Tax Act*. Under the Agri-Invest program, a participating farmer contributes amounts into a savings account based on the farmer's gross farm revenues with the earnings from the fund being taxable annually. This savings account under the Agri-Invest program is a NISA Fund No. 1. In addition, the government makes matching contributions to a farmer's NISA Fund No. 2. A farmer's NISA Fund No 2. accumulates on a tax-deferred basis. The funds in both NISA Fund No. 1 and No. 2 are available to be invested by a farmer, with funds in NISA Fund No. 2 withdrawn in priority to amounts in NISA Fund No. 1.

Subsection 12(10.2) of the Act requires that a taxpayer's NISA receipts from a NISA Fund No. 2 be included in income. In particular, taxpayers are required to include in income, as income from property, the total of all amounts determined by the formula A-B. The description of A is an amount paid at any particular time in the year out of the taxpayer's NISA Fund No. 2. In general terms, the description of B provides a reduction from a payment out of a NISA Fund No. 2 to the extent that a farmer is deemed to have previously received amounts from the farmer's NISA Fund No. 2.

The description of B is amended consequential to the enactment of new subsection 12(10.4), which is described below.

This amendment applies to the 2008 and subsequent taxation years.

Acquisition of control – corporate NISA Fund No. 2 balance

ITA
12(10.4)

New subsection 12(10.4) of the Act provides that the balance of a corporation's NISA Fund No. 2 is treated as having been paid out immediately before an acquisition of control of the corporation. This rule ensures that a corporate NISA Fund No. 2 balance does not have preferred tax status when compared to an individual farmer's NISA Fund No. 2 balance under the new Agri-Invest program.

In general, this amendment applies to the 2008 and subsequent taxation years.

Clause 12

Partnerships

ITA
18.2(9)

The reference to the word "owns" in the first paragraph of the explanatory note to subsection 18.2(9) should be replaced by the word "holds".

The reference to the words "paid or payable" in paragraph (b) of the explanatory note to subsection 18.2(9) should be replaced by the word "deductible".

Clause 15

Taxable capital gain – donation of listed securities

ITA
38(*a.1*)

The explanatory note to paragraph 38(a.1) should be replaced by the following:

Paragraph 38(*a.1*) of the Act provides that, where a capital gain results from the making of a gift of certain publicly traded securities to a qualified donee (other than a private foundation), no portion of the capital gain in respect of such a gift is included in computing a taxpayer's taxable capital gains. Paragraph 38(*a.1*) is amended to extend the capital gains exemption for such gifts, made on or after March 19, 2007, to private foundations.

The language of the paragraph is also updated consequential to the replacement of the "prescribed stock exchange" concept by the new category of "designated stock exchange". Please refer to the commentary on Clause 68 of the Bill for more information.

Clause 22

The explanatory notes should be revised by adding the following after the explanatory notes to subsections 80(1) and 89(1):

Transfer of property to corporations by shareholders

Section 85 of the Act provides rules for tax-deferred transfers of certain types of property by a taxpayer to a taxable Canadian corporation in exchange for shares.

Eligible property

ITA
85(1.1)(*i*)

Subsection 85(1.1) of the Act describes the types of property (referred to in the Act as "eligible property") that may be transferred on a tax-deferred basis to a corporation under subsection 85(1).

Paragraph 85(1.1)(*i*) provides that a NISA Fund No. 2 is an eligible property. Paragraph 85(1.1)(*i*) is amended consequential to the introduction of the new Agri-Invest program to provide that a NISA Fund No. 2 owned by an individual is an eligible property. A corporate NISA Fund No. 2 does not qualify as an eligible property for the purposes of section 85.

In general, this amendment applies to the 2008 and subsequent taxation years.

Clause 26

Definitions - Foreign affiliates

ITA
95(1)

Consequential to the withdrawal of draft paragraphs 95(2)(f) to (f.2) for further consideration, a number of draft definitions in subsection 95(1) have been withdrawn. Accordingly, the explanatory notes to these draft definitions in subsection 95(1) should be deleted:

"calculating currency"
"calculating currency exchange rate"
"Canadian currency exchange rate"
"designated acquired corporation"
"designated taxable Canadian property"
"relevant non-arm's length entity"
"taxable Canadian business"
"transitional exchange rate"

ITA
95(2)(*a.1*)

The word "immoveable" in the explanatory note to paragraph 95(2)(a.1) should be replaced by the word "immovable".

ITA
95(2)(*f*) to (*f.2*)

Draft paragraphs 95(2)(f) to (f.2) have been withdrawn for further consideration in response to submissions received.

ITA
95(2)(*i*)

The last paragraph of the explanatory note to paragraph 95(2)(i) should be replaced by the following:

These amendments to paragraph 95(2)(*i*) are part of the Global Section 95 Election package described at the beginning of the commentary to section 95. In the case of paragraph 95(2)(*i*), where such an election is validly made by a taxpayer in respect of all the taxpayer's foreign affiliates,

- new amended paragraph 95(2)(*i*) applies to taxation years, of all the taxpayer's foreign affiliates, that begin after 1994, and

- paragraph 95(2)(*i*) of the Act, as required by the aforementioned transitional rule to be read in respect of settlements and extinguishments of debt held by a foreign affiliate of the taxpayer that occur before October 2, 2007 in taxation years, of the foreign affiliate of the taxpayer, that begin after December 20, 2002, also applies in respect of settlements and extinguishments of debt held by a foreign affiliate of the taxpayer that occur in taxation years, of the foreign affiliate of the taxpayer, that begin after 1994 and before December 21, 2002.

ITA
95(2)(*o*)

The explanatory note to paragraph 95(2)(o) should be revised by replacing the fourth paragraph of that explanatory note by the following:

The second alternate test is that, throughout the period, in the fiscal period of the partnership that includes the particular time, during which the particular person was a member of the partnership

- the total of the fair market value of all partnership interests in the partnership owned by the particular person was equal to or greater than 1 per cent of the total of the fair market value of all partnership interests in the partnership owned by all members of the partnership, and
- the total of the fair market value of all partnership interests in the partnership owned by the particular person or by persons (other than trusts) related to the particular person was equal to or greater than 10 per cent of the total of the fair market value of all partnership interests in the partnership owned by all members of the partnership.

ITA
95(2)(*u*)

Consequential to the withdrawal of draft paragraphs 95(2)(f) to (f.2) for further consideration and thus the withdrawal of the draft definitions "designated taxable Canadian property" and "taxable Canadian business" in subsection 95(1), draft paragraph 95(2)(u) has been revised. Accordingly, the second paragraph of explanatory note to paragraph 95(2)(u) should be replaced by the following:

The first rule provides that, if any entity is a member of a particular partnership that is a member of another partnership, the entity is deemed to be a member of the other partnership for the purpose of

- applying the second rule,
- applying the reference, in paragraph 95(2)(*a*), to "a member" of a partnership,
- paragraphs 95(2)(*a.1*) to (*b*), (*g.03*) and (*o*), and
- paragraphs (*b*) and (*c*) of the definition "investment business" in subsection 95(1).

Rule for subsection 95(2)

ITA
95(2.2)

Consequential to the withdrawal of draft paragraphs 95(2)(f) to (f.2) for further consideration, draft subsection 95(2.2) has been revised. Accordingly, the reference to paragraph 95(2)(f.1) in the fifth paragraph of the explanatory note of subsection 95(2.2) should be deleted.

ITA
95(2.6)

Consequential to the withdrawal of draft paragraphs 95(2)(f) to (f.2) for future consideration and thus the withdrawal of draft subsection 95(2.6) and the draft definition "non-arm's length entity" in subsection 95(1), the explanatory note to draft subsection 95(2.6) should be deleted.

Clause 29

Charitable donation of employee option securities

ITA
110(1)(*d.01*)

The explanatory note to paragraph 110(1)(d.01) should be replaced by the following:

When an employee acquires a publicly-listed security under an option granted by the employer and donates the security to a qualified donee (other than a private foundation) within 30 days, the employee may be eligible for a special deduction, the general effect of which is to exempt the associated employment benefit from tax. Paragraph 110(1)(*d.01*) of the Act is amended to extend this provision to donations to private foundations made on or after March 19, 2007.

Clause 30

Gifts of medicine

ITA
110.1(1)(*e*) of the October 2, 2007 release or
110.1(1)(*a.1*) of the Bill

The reference to paragraph 110.1(1)(e) in the explanatory note to subsection 110.1(1)(e) of the October 2, 2007 release should be read as paragraph 110.1(1)(a.1). Accordingly, the explanatory note to paragraph 110.1(1)(a.1) of the Bill should be replaced by the following:

ITA
110.1(1)(*a.1*)

Gifts by corporations of property held in inventory, to registered Canadian charities and other qualified donees, are eligible for a charitable donations deduction in respect of the gift. Paragraph 110.1(1)(*a.1*) of the Act is added to allow corporations that make donations of medicines from their inventory to claim a special additional deduction for "eligible medical gifts" (as provided in new subsection 110.1(8)), generally equal to the lesser of the cost of the donated medicine and 50 per cent of the amount, if any, by which the fair market value of the donated medicine exceeds that cost.

This measure applies to gifts made on or after March 19, 2007.

Eligible medical gift

ITA
110.1(8)

The reference to paragraph 110.1(1)(e) in the explanatory notes to subsection 110.1(8) should be read as paragraph 110.1(1)(a.1).

Clause 31

ITA
110.6(4)

The explanatory note to subsection 110.6 should be revised by adding the following after the explanatory note to subsection 110.6(2.3):

Maximum capital gains deduction

ITA
110.6(4)

Subsection 110.6(4) limits the total amount that may be deducted in respect of a taxpayer's lifetime capital gains exemption under section 110.6 to the maximum of the amount determined by the formula in paragraph 110.6(2)(*a*).

Subsection 110.6(4) is amended to add reference to proposed new subsection 110.6(2.3), in order to take into account the additional amount that may be deducted under that subsection for a taxation year that includes March 19, 2007.

This amendment generally applies to taxation years that end on or after March 19, 2007.

Deductions denied

ITA
110.6(31) and (32)

The reference to "March 20, 2007" in the first paragraph of explanatory notes to paragraphs 110.6(31) and (32) should be replaced by "March 19, 2007".

Clause 36

ITA
118(1)(*b.1*)

The explanatory notes should be revised by adding the following after the explanatory note to section 118:

Child amount

ITA
118(1)(*b.1*)

Paragraph 118(1)(*b.1*) provides the amount for the child tax credit. The amount for the credit is $2,000 per eligible child who is under the age of 18 years at the end of a taxation year and is available to:

- in the case of a child who resides together with the child's parents throughout the taxation year, either of those parents and
- in the case of a child who does not reside together with the child's parents throughout the taxation year, the parent who is eligible to claim the wholly dependent relative credit for the taxation year in respect of that child (or would be so eligible if that child was the parent's only child).

Eligibility for the wholly dependent relative credit is reduced by the dependent's income. As a result, a parent who would otherwise be eligible to claim the child tax credit could (under the existing rule) be ineligible to claim the child tax credit because of the child's income. Subparagraph 118(1)(*b.1*)(ii) is amended to provide that, in determining which parent is eligible to claim the wholly dependant relative credit for the purpose of the child tax credit, the income of the child is irrelevant.

This amendment applies to the 2007 and subsequent taxation years.

Clause 41

SIFT trusts – definitions – REIT

ITA
122.1(1)

The explanatory note to subsection 122.1(1) should be replaced by the following:

Subsection 122.1(1) of the Act sets out a number of definitions for the purposes of the rules that apply to "SIFT trusts" and, in some cases, "SIFT partnerships" (both of which terms are defined in subsection 248(1) of the Act). Among these is the definition "real estate investment trust". One of the requirements for a trust to be a real estate investment trust is that the fair market value of certain properties it holds must equal at least 75 per cent of the trust's "equity value" (as itself defined in subsection 122.1(1)). In addition to real or immovable property and cash, the properties in question include certain obligations of Canadian governments and quasi-governmental entities.

In its current form, subsection 122.1(1) refers to these obligations as properties described in clause 212(1)(*b*)(ii)(C) of the Act. Paragraph 212(1)(*b*) of the Act is being substantially revised, and the reference in subsection 122.1(1) will no longer be valid. This amendment replaces that reference with a reference to properties described in paragraph (*a*) of the new definition "fully exempt interest" in subsection 212(3). For additional information, readers may consult the notes to that definition.

To coincide with the revision of paragraph 212(1)(*b*), this consequential amendment applies after December 31, 2007.

Clause 42

Deemed payment on account of tax - Disability supplement

ITA
122.7(3)

The amounts referred to for the maximum credit for the WITB Supplement in the third paragraph of explanatory note to subsection 122.7(3) should be read as $250 and $500 respectively.

Clause 43

"investment tax credit"

ITA
127(9)

The third paragraph of the explanatory note to subsection 127(9) of the definition "investment tax credit" should be replaced by the following:

New paragraph (*a.5*) adds a taxpayer's child care space amount for a taxation year to the calculation of the ITC for the year. New paragraph (*a.5*) applies in respect of expenditures incurred on and after March 19, 2007.

Clause 46

Definitions

ITA
149.1(1)

The explanatory note to subsection 149.1(1) should be revised by deleting the definition "non-qualifying private foundation" and by replacing the first paragraph of the definition "relevant person" with the following:

The new definition "relevant person" applies for the purpose of the calculation of the excess corporate holdings percentage of a private foundation in respect of a class of shares of the capital stock of a corporation. If a private foundation holds more than 2 per cent of the issued shares of a class, the foundation will be required, as part of the prescribed information required to be reported with an information return for a taxation year beginning on or after March 19, 2007, to report any material transaction engaged in by the foundation or a relevant person in the taxation year, as well as the balance of such shareholdings. Reporting is not required in respect of a relevant person whose holdings of a class of shares are small enough not to be a material interest (determined under subsection 149.2(1) of the Act) or who is found to be an estranged family member.

Information may be communicated

ITA
149.1(15)

The last two paragraphs of the explanatory note to subsection 149.1(15) should be deleted.

Clause 51

$3,000 Threshold

ITA
157(2.1)

The reference to the word "respect" in the first sentence of the explanatory note to subsection 157(2.1) should be read as "respects".

Clause 57

"qualified investment"

ITA
204

The explanatory note to the definition of "qualified investment" in section 204 should be replaced by the following:

Section 204 of the Act sets out definitions for the purposes of Part X of the Act. These definitions include "qualified investment". In its current form, the definition "qualified investment" refers to obligations described in clause 212(1)(*b*)(ii)(C). Paragraph 212(1)(*b*) is being substantially revised, and this reference will no longer be valid. This amendment therefore replaces that reference with a reference to obligations described in paragraph (*a*) of the new definition "fully exempt interest" in subsection 212(3). For additional information, readers may consult the notes to that definition. To coincide with the revision of paragraph 212(1)(*b*), this consequential amendment applies after December 31, 2007.

The language of paragraphs (*c*) and (*d*) of the definition "qualified investment" is also updated consequential to the replacement of the "prescribed stock exchange" concept by the new category of "designated stock exchange". Please refer to the commentary on Clause 68 for more information.

Clause 58

The explanatory notes should be revised by adding the following after the explanatory note to section 204:

Replacement of "prescribed stock exchange" by "designated stock exchange"

ITA
207.1(5)

The amendment is consequential to the replacement of the "prescribed stock exchange" concept by the new category of "designated stock exchange". Please refer to the commentary on Clause 68 for more information.

Clause 59

Non-residents' Canadian-source interest income

ITA
212(1)(*b*)

The third paragraph of the explanatory note to paragraph 212(1)(b) should be deleted.

The last two paragraphs of the explanatory note to paragraph 212(1)(b) should be replaced by the following:

The specific exceptions under which early repayment can be provided for do not, as it happens, include the legislated removal of the tax itself. This is significant because a Canadian-resident corporation and a non-resident lender might wish to structure a current borrowing in the expectation of being able to take advantage of the amendment to paragraph 212(1)(*b*). To accommodate this possibility, subclause (1) adds to the list of circumstances in which the terms of a debt (or an agreement relating to it) may require the borrower to repay. The addition, new clause 212(1)(*b*)(vii)(G), refers to early repayment in the event that a change to the Act or a tax treaty relieves the lender from liability under Part XIII in respect of the interest. The new clause applies to obligations entered into on or after March 19, 2007.

After December 31, 2007, subclause (2)'s fully amended version of paragraph 212(1)(*b*) will come into effect. This provides that non-resident persons are taxable on any amounts of interest (other than fully exempt interest) they receive from non-arm's length persons resident in Canada, as well as on participating debt interest. In other cases, no tax under subsection 212(1) is payable on the interest.

ITA
212(3)

The last paragraph of the explanatory note to subsection 212(3) should be replaced by the following:

The new definitions in subsection 212(3) will apply after December 31, 2007.

ITA
212(14)

The last sentence of the explanatory note to subsection 212(4) should be replaced by the following:

This measure will apply after December 31, 2007.

ITA
212(18)

The last paragraph of the explanatory note to subsection 212(18) should be replaced by the following:

Amended subsection 212(18) will apply after December 31, 2007.

ITA
212(19) and (20)

The last paragraph of the explanatory notes to subsections 212(19) and (20) should be replaced by the following:

The amendments to subsection 212(19) and new subsection 212(20) will apply after December 31, 2007.

Clause 60

Part XIII rules

ITA
214(8) and (11)

The last sentence of the first paragraph to explanatory notes to subsections 214(8) and (11) should be replaced by the following:

Since those citations will no longer be correct, subsection 214(8) is amended, with application after December 31, 2007.

The last paragraph of explanatory notes to subsections 214(8) and (11) should be replaced by the following:

These amendments will after December 31, 2007.

Clause 62

Regulations

ITA
221(1)(*d.2*)

This explanatory note was originally published as part of the draft amendments released on July 4, 2007 relating to the disclosure of information by publicly traded trusts and partnerships. The reference to the words "ANNOUNCEMENT DATE" in the second paragraph of the explanatory note to paragraph 221(1)(d.2) should be read as "July 4, 2007".

Clause 63

The explanatory notes should be revised by adding the following after the explanatory note to subsection 221(1):

Requirement to provide documents or information

ITA
231.2(1)

Subsection 231.2(1) provides that, notwithstanding any other provision of the Act, the Minister of National Revenue may by notice require that any person provide information or any document for any purpose relating to the administration or enforcement of the Act. An exception is made where the information or document relates to an unnamed person or persons, in which case the procedure set out in subsections 231.2(2) to (6) must be followed.

Subsection 231.2(1) is amended to provide that the Minister may by notice require any person to provide information or any document relating to the administration or enforcement of the Act, of a comprehensive tax information exchange agreement between Canada and another country or jurisdiction or, for greater certainty, of a tax treaty with another country.

A "tax treaty" is defined in subsection 248(1) to mean a comprehensive agreement for the elimination of double taxation on income between the Canadian and foreign government that has the force of law in Canada at that time.

Clause 64

The explanatory notes should be revised by adding the following after the explanatory note to subsection 231.2(1):

Where taxpayer information may be disclosed

ITA
241(4)(*e*)(xii)

Subparagraph 241(4)(*e*)(xii) is amended to provide that an official may provide taxpayer information, or allow the inspection of or access to taxpayer information under and solely for the purposes of a provision contained in a tax treaty or in a comprehensive tax information exchange agreement between Canada and another country or jurisdiction.

A "tax treaty" is defined in subsection 248(1) to mean a comprehensive agreement for the elimination of double taxation on income between the Canadian and foreign government that has the force of law in Canada at that time.

ITA
241(4)(*q*)

Subsection 241(4) of the Act authorizes the communication of taxpayer information to government officials, outside the Canada Revenue Agency, for limited purposes. Subsection 241(4) is amended, applicable on Royal Assent, to add new paragraph 241(4)(*q*), which provides for the disclosure of taxpayer information to an official of the government of a province solely for use in the management or administration by that government of a program relating to earning supplementation or income support.

Clause 65

ITA
248(1)

The explanatory notes should be revised by adding the following after the explanatory note to paragraph 241(4)(q):

"NISA Fund No. 2"

The definition "NISA Fund No. 2" in subsection 248(1) is amended to apply only to the portion of the NISA Fund No. 2 balance that can reasonably be considered to be attributable to a program that allows the funds in the account to accumulate. This change is meant to distinguish a farmer's Agri-Invest funds that may accumulate on a tax-deferred basis in the farmer's NISA Fund No. 2 from other government funds that may be paid to the farmer indirectly through the account (e.g., payments made by government to a farmer under the Canadian Agricultural Income Stabilization (CAIS) program). Unlike amounts contributed to, or earned by, a tax-deferred NISA Fund No. 2, farm receipts are generally taxable in the year paid by government as ordinary income from a farm business under section 9, or under paragraph 12(1)(x) of the Act to the extent that section 9 does not apply to the receipt. This amendment clarifies that this tax treatment applies to CAIS receipts.

This amendment applies to the 2008 and subsequent taxation year.

Clause 66

Replacement of "prescribed stock exchange" by "designated stock exchange" – securities lending arrangements

ITA
260(8)

The explanatory note to subsection 260(8) should be replaced by the following:

Subsection 260(8) of the Act applies special rules, for the purposes of Part XIII of the Act, to certain "compensation payments" made under securities lending arrangements (SLAs). In its current form, the subsection refers to particular subparagraphs of paragraph 212(1)(*b*). With the restructuring of that paragraph, consequential amendments are required to be made to subsection 260(8).

Existing subparagraph 260(8)(*a*)(ii), which deems interest under an SLA to be payable by the issuer of the security, effectively for the purpose of existing subparagraph 212(1)(*b*)(vii), is no longer necessary and is deleted.

Existing subparagraph 260(8)(*a*)(iii) is renumbered as (ii), and amended to refer, with no change to its effect, to the new definition "fully exempt interest" in subsection 212(3).

These amendments will apply after December 31, 2007.

ITA
260(9.1)

The explanatory notes should be revised by adding the following after the explanatory note to subsection 260(8):

New subsection 260(9.1) is added consequential to the introduction of the general withholding tax exemption in amended paragraph 212(1)(*b*) for interest paid to arm's length non-residents.

The interest exemption is available for interest paid to a non-resident person with whom the payer deals at arm's length. In the context of securities lending arrangements, this subsection deems the interest compensation payments in the arrangement to be interest paid between non-arm's length persons, if the lender is not dealing at arm's length with either or both of the borrower or the issuer of the security.

This amendment will apply after December 31, 2007.

Clause 67

Functional currency reporting

ITA
261(4)

The last paragraph (bullet) to the explanatory note to subsection 261(4) should be replaced by the following:

Where a taxation year of a foreign affiliate of a taxpayer ends in a particular taxation year of the taxpayer, references to "Canadian currency" in section 95 (and the references in the Regulations made for the purposes of section 95 other than the reference in subsection 5907(6)) are to be read, in respect of the foreign affiliate, as references to "the taxpayer's functional currency for the taxpayer's particular taxation year".

Converting currency amounts

ITA
261(5) and (9)

In Example 1, contained in the explanatory note to proposed subsection 261(5), and in Example 3, contained in the explanatory note to proposed subsection 261(9), the item on the balance sheet referred to as "future tax liability" should read as a reference to "deferred income or gains".

Anti-avoidance

ITA
261(18)

The reference to paragraph 216(3)(e) in the explanatory note to subsection 261(18) should be read as paragraph 261(3)(e).

Authority to designate stock exchange

ITA
262

The references to the word "Minister" in the explanatory note to section 262 should be replaced by the words "Minister of Finance".

Clause 68

Replacement of "prescribed stock exchange" by "designated stock exchange"

ITA
Various references

The references to Clause 55 in the explanatory notes should be read as Clause 68.

The explanatory note to Clause 68 of the Bill should be replaced by the following:

These clauses amend various provisions of the Act consequential to the replacement of the "prescribed stock exchange" concept by the new category of "designated stock exchange", as explained in more detail under the notes to new section 262. These amendments update the language of the provisions but are not intended to alter their substantive effect. The amendments apply on and after the day on which the amending bill receives Royal Assent. The provisions of the Act amended by these clauses are the following:

- subparagraphs 7(9)(*d*)(i) and (ii);
- subparagraph 13(27)(*f*)(i);
- paragraph (*e*) of the definition "Canadian newspaper" in subsection 19(5);
- subparagraph 38(*a.1*)(i);
- subparagraph 48.1(1)(*a*)(ii);
- paragraphs (*b*) and (*c*) of the definition "qualified person" in subsection 55(1);
- subsection 55(6);
- paragraph (*b*) of the definition "excluded security" in subsection 80(1);
- subparagraph (*c*)(ii) and subparagraph (*d*)(ii) of subsection 86.1(2);
- subsection 87(4.3) and paragraphs 87(9)(*a.2*) and (10)(*e*);
- paragraph (*a*) of the definition "public corporation" in subsection 89(1);

- subparagraph 108(2)(*b*)(vi);
- subsection 110.1(6);
- paragraph 112(2.21)(*c*);
- clauses (*a*)(i)(A) and (B) of the definition "qualified investment" in subsection 115.2(1);
- paragraphs 118.1(18)(*a*), (*b*) and (*c*);
- subparagraphs (*a*)(i) and (ii) and clauses (*c*)(ii)(A) and (B) of the definition "split income" in subsection 120.4(1);
- paragraph (*c*) of the definition "Canadian-controlled private corporation" in subsection 125(7);
- subsection 137(4.1);
- the portion of subsection 141(5) before paragraph (*a*);
- paragraph (*b*) of the definition "non-qualified investment" in subsection 149.1(1);
- the portion of paragraph 187.3(2)(*d*) before subparagraph (*d*)(i);
- subparagraphs (*c*)(i) and (ii), and paragraph (*d*) of the definition "qualified investment" in section 204;
- subsection 207.1(5);
- subsection 207.5(2);
- paragraph (*a*) of the definition "Canadian property mutual fund investment" in subsection 218.3(1);
- the portion of paragraph (*d*) before subparagraph (i) in the definition "grandfathered share" in subsection 248(1);
- paragraphs (*d*) to (*f*) of the definition "taxable Canadian property" in subsection 248(1); and
- paragraph (*d.1*) of the definition "term preferred share" in subsection 248(1).

Income Tax Application Rules

Clause 69

Certificates of exemption

ITAR
10(5)

The last sentence of the explanatory note to subsection 10(5) should be replaced by the following:

This measure will apply after December 31, 2007.

Clauses 72 and 73

Definitions

ITR
204.1 and 229.1

These explanatory notes were originally published as part of the draft amendments released on July 4, 2007 relating to the disclosure of information by publicly traded trusts and partnerships. The references to the words "ANNOUNCEMENT DATE" in the explanatory notes to sections 204.1 and 229.1 of the Regulations should be read as "July 4, 2007".

ITR
229.1(3)

This explanatory note was originally published as part of the draft amendments released on July 4, 2007 relating to the disclosure of information by publicly traded trusts and partnerships. The explanatory note to subsection 229.1(3) of the Regulations should be replaced by the following:

New subsection 229.1(3) of the Regulations provides that the time on or before which a public partnership is required to meet the requirements of subsection 229.1(2) is

- on or before the day that is the earlier of
  - 60 days after the end of the calendar year in which the fiscal period ends, and
  - four months after the end of the fiscal period, and
- in the case of a public partnership that is a public investment partnership, the day that is 67 days after the end of the calendar year in which the fiscal period ends.

Clause 74

Stock exchanges

ITR
3200 and 3201

The references to Clause 59 in the explanatory notes should be read as Clause 74.

Clause 86

Prohibited investments

ITR
8514(2)

The explanatory note to subsection 8514(2) of the Regulations should be replaced by the following:

Subsection 8514(2) of the Regulations sets out a number of exceptions to the list of prohibited investments for registered pension plans, including:

- paragraph 8514(2)(*a*) - government bonds and similar obligations described in clause 212(1)(*b*)(ii)(C) of the Act; and
- paragraphs 8514(2)(*b*) and (*c*) - shares and debt obligations of a corporation listed on a stock exchange referred to in section 3200 or 3201 of the Regulations.

Paragraph 212(1)(*b*) is being substantially amended, and the reference to clause 212(1)(*b*)(ii)(C) will no longer be valid. Paragraph 8514(2)(*a*) is amended to replace that reference with a reference to paragraph (*a*) of the new definition "fully exempt interest" in subsection 212(3). Refer to the commentary on that definition for more information. To coincide with the amendment to paragraph 212(1)(*b*), this consequential amendment applies after December 31, 2007.

Paragraphs 8514(2)(*b*) and (*c*) are also updated consequential to the replacement of the "prescribed stock exchange" concept by the new category of "designated stock exchange". Refer to the commentary on new section 262 of the Act for more information.

Part 4
Disability Savings

Amendments Relating to Income Tax

Income Tax Act

Revised explanatory notes relating to registered disability savings plans:

Clause 108

ITA
87(10)

The explanatory notes should be revised by adding the following after the explanatory note to paragraph 75(3)(a):

Amalgamations – Shares deemed listed

ITA
87(10)

Subsection 87(10) of the Act provides a rule dealing with an amalgamation of two or more corporations where a predecessor corporation's listed shares are temporarily replaced by unlisted shares of the new corporation. Subsection 87(10) deems those temporary shares to have been listed on a designated stock exchange for the purposes of subsection 116(6), the definitions "qualified investment" in subsections 146(1), 146.1(1) and 146.3(1) and in section 204, and the definition "taxable Canadian property" in subsection 248(1). The inclusion of the references to the "qualified investment" definitions is necessary to ensure that certain types of property described in subparagraph (*b*)(i) or (ii) or paragraph (*d*) in the definition "qualified investment" in section 204 or in paragraph 4900(1)(*i*) of the *Income Tax Regulations* do not lose their qualified investment status in the course of an amalgamation.

Subsection 87(10) is amended to add a reference to the definition "qualified investment" in new subsection 205(1). This amendment, which applies to the 2008 and subsequent taxation years, is consequential to the introduction of registered disability savings plans.

Clause 115

ITA
146.4

Given that Registered Disability Savings Plans (RDSPs) are new to the tax system, the revised explanatory notes to the provisions setting out the structure of an RDSP, ITA section 146.4, are provided in their entirety.

Registered disability savings plans

ITA
146.4

New section 146.4 of the Act provides rules relating to registered disability savings plans.

In general terms, a registered disability savings plan is a trust arrangement, the beneficiary under which qualifies for the disability tax credit, and to which contributions (including grant and bond payments under the *Canada Disability Savings Act*) are made for the purpose of improving the long-term financial security of the beneficiary. Generally, there can never be more than one registered disability savings plan of a beneficiary at any given time.

The tax treatment of registered disability savings plans is similar, in some respects, to that of registered education savings plans. It is similar in that contributions are not deductible and investment income accrues on a tax-deferred basis. The tax treatment of payments made from registered disability savings plans is, however,

quite different. Unlike registered education savings plans, each payment made from a registered disability savings plan is considered to be comprised, in part, of grants and bonds and investment income, and such part is included in the beneficiary's income when the payment is received.

Section 146.4 applies to the 2008 and subsequent taxation years.

Definitions

ITA
146.4(1)

New subsection 146.4(1) of the Act defines a number of terms that apply for the purposes of new section 146.4.

"assistance holdback amount"

Subsection 146.4(1) defines "assistance holdback amount", in relation to a disability savings plan, as having the meaning assigned under the *Canada Disability Savings Act*. (It is expected that the definition will be set out in regulations made pursuant to that Act, rather than in the Act itself.) In general terms, the assistance holdback amount is the amount that the plan would be required, under the *Canada Disability Savings Act*, to repay to the government if a disability assistance payment were made from the plan.

The definition is relevant for a number of provisions in new section 146.4 of the Act.

- Subsection 146.4(4) sets out conditions that a disability savings plan must satisfy in order for the plan to be a registered plan. One such condition – set out in paragraph 146.4(4)(*j*) – is that the plan prohibit a disability assistance payment from being made if the payment would cause the fair market value of the plan's assets to fall below the assistance holdback amount. This is to ensure that the plan has sufficient assets to satisfy its potential repayment obligations under the *Canada Disability Savings Act.*

- Subsection 146.4(7) sets out the manner for determining the non-taxable portion of a disability assistance payment. In general terms, the proportion of the payment that is non-taxable is the same as the proportion that contributions to the plan is to the total value of the plan's assets. In determining this proportion, the value of the plan's assets is reduced by the assistance holdback amount – i.e., by the amount that the plan is required to retain in order to satisfy any repayment obligations that may arise under the *Canada Disability Savings Act.*

- Paragraph 146.4(10)(*a*) provides for the automatic deregistration of a registered disability savings plan where the plan becomes non-compliant. When this occurs, paragraph 146.4(10)(*b*) deems a disability assistance payment to have been made from the plan, the taxable portion of which is included in income by virtue of subsection 146.4(6). The deemed payment is equal to the value of the plan's assets less the assistance holdback amount. The exclusion of the assistance holdback amount is in recognition of the fact that the plan will be required by the *Canada Disability Savings Act* to repay this amount to the government.

- If a registered disability savings plan becomes deregistered because it pays to the beneficiary some or all of the assistance holdback amount (in contravention of paragraph 146.4(4)(*j*)), paragraph 146.4(10)(*c*) deems the plan to have made an additional disability assistance payment equal to the amount so paid out, the non-taxable portion of which is deemed to be nil. New paragraph 60(*z*) provides for an offsetting deduction on the repayment of this amount to the government.

"contribution"

Subsection 146.4(1) defines "contribution" to a disability savings plan to exclude amounts paid into the plan under the *Canada Disability Savings Act*. This ensures, among other things, that grants and bonds paid into a registered disability savings plan under the *Canada Disability Savings Act* are not taken into account for the purpose of applying the $200,000 lifetime limit (in subparagraph 146.4(4)(*g*)(iii)) on contributions to registered disability savings plans of a beneficiary, and that grants and bonds are taxable when paid out of registered disability savings plans.

The definition "contribution" also excludes prescribed payments, in anticipation that some provinces may wish to make contributions to registered disability savings plans on behalf of their residents.

These exclusions do not apply for the purpose of paragraph (*b*) of the definition "disability savings plan" in this subsection. This ensures that an arrangement that receives no amounts other than bonds paid under the *Canada Disability Savings Act* may still qualify as a disability savings plan.

"disability assistance payment"

Subsection 146.4(1) defines a "disability assistance payment" in relation to a disability savings plan of a beneficiary to mean any payment made from the plan to the beneficiary during the beneficiary's lifetime or to the beneficiary's estate following the death of the beneficiary. In accordance with the registration condition in new paragraph 146.4(4)(*i*), disability assistance payments are one of three types of payments that a registered disability savings plan is permitted to make. (The others are transfers in accordance with subsection 146.4(8) and repayments to the government as required under the *Canada Disability Savings Act*.)

Under subsection 146.4(6), the amount by which a disability assistance payment exceeds the non-taxable portion of the payment (as determined under subsection 146.4(7)) is included in computing the income of the beneficiary or the beneficiary's estate.

Section 146.4 places no restrictions on the timing or amount of a disability assistance payment, or on the use to which such a payment is put, apart from:

- prohibiting a registered disability savings plan from making a disability assistance payment that would result in the plan being unable to satisfy a repayment requirement that may arise under the *Canada Disability Savings Act* (paragraph 146.4(4)(*j*));
- requiring that lifetime disability assistance payments commence no later than the year in which the beneficiary attains 60 years of age (paragraph 146.4(4)(*k*));
- placing an annual limit on the amount of lifetime disability assistance payments (paragraph 146.4(4)(*l*));
- requiring that a registered disability savings plan specify whether disability assistance payments that are not lifetime disability assistance payments are permitted or not (paragraph 146.4(4)(*m*)); and
- in some cases, imposing the limit that would otherwise apply only to lifetime disability assistance payments on all disability assistance payments and requiring, after the beneficiary attains 59 years of age, that this amount be paid out each year (paragraph 146.4(4)(*n*)).

Under the *Canada Disability Savings Act*, a disability assistance payment made from a registered disability savings plan at a time when there is an assistance holdback amount in relation to the plan will trigger a requirement for the plan to repay the assistance holdback amount to the government.

"disability savings plan"

Subsection 146.4(1) defines "disability savings plan" of a beneficiary to be an arrangement, between a trust company (the "issuer") and one or more other entities, that is entered into in a year in which the beneficiary is a DTC-eligible individual (as defined in this subsection) and under which contributions are to be invested and used by the issuer to make payments to the beneficiary. (For the purposes of this definition, contributions include payments made into the plan under the *Canada Disability Savings Act*. This ensures that an arrangement that receives no amounts other than bonds paid under the *Canada Disability Savings Act* does not fail to qualify as a disability savings plan.)

The definition "disability savings plan" requires that the issuer be licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee. In addition, the definition requires that, at the time the arrangement is entered into, there be an agreement between the issuer and the specified Minister (i.e., the Minister of Human Resources and Social Development) that applies to the arrangement for the purposes of the *Canada Disability Savings Act*.

The definition also limits the entity (or entities) with whom the issuer can enter into the arrangement to the following:

(a) the beneficiary,

(b) any entity that is, at the time the arrangement is entered into, a qualifying person in relation to the beneficiary, and

(c) a legal parent who is not, at the time the arrangement is entered into, a qualifying person in relation to the beneficiary, but who is, at that time, a holder of another registered disability savings plan of the beneficiary.

The expression "qualifying person" is defined in subsection 146.4(1). It includes, in the case of a beneficiary that has not reached the age of majority, the following entities:

(a) a legal parent of the beneficiary,

(b) a guardian, tutor, curator or other individual who is legally authorized to act on behalf of the beneficiary, and

(c) a public department, agency or institution that is legally authorized to act on behalf of the beneficiary.

In the case of a beneficiary who is of the age of majority but not competent to enter into a disability savings plan, it includes the entities described in (b) and (c) above. The exclusion of legal parents in the case of a contractually incompetent adult beneficiary means that a legal parent of such a beneficiary will be permitted to establish a disability savings plan for the beneficiary only if the parent is, at the time the plan is established, legally authorized to act on behalf of the beneficiary or a holder of a pre-existing registered disability savings plan of the beneficiary.

There are no qualifying persons in relation to a contractually competent adult beneficiary. This means that a disability savings plan can be established for such a beneficiary only by the beneficiary or by a legal parent who is, at the time the plan is established, a holder of a pre-existing registered disability savings plan of the beneficiary.

If there is a pre-existing registered disability savings plan of the beneficiary at the time a disability savings plan is established, subsection 146.4(3) generally requires that the pre-existing plan be wound-up within 120 days of the new plan being established in order for the new plan to qualify as a registered plan. In the course of the wind-up, funds from the pre-existing plan can be transferred to the new plan on a tax-free basis under subsection 146.4(8).

"DTC-eligible individual"

Subsection 146.4(1) defines an individual to be a "DTC-eligible individual" in respect of a year if the individual has a severe and prolonged physical or mental impairment in respect of which the individual, or another person, is entitled to a deduction under section 118.3 of the Act (generally referred to as the "disability tax credit") in computing tax payable for the year, or would be so entitled if the restriction for attendant care in paragraph 118.3(1)(*c*) of the Act were disregarded.

This definition is relevant for the definition "disability savings plan" in this subsection, because the beneficiary of the plan must be a DTC-eligible individual in respect of the year in which the plan is entered into in order for the plan to be a disability savings plan. It is also relevant for paragraph 146.4(4)(*f*), which prohibits contributions in any year in respect of which the beneficiary is not a DTC-eligible individual, and for paragraph 146.4(4)(*p*), which requires a registered disability savings plan to be terminated by the end of the year following the year in respect of which the beneficiary ceases to be a DTC-eligible individual (or, where DTC-eligibility is in dispute, by such later time as may be specified by the Minister in accordance with new paragraph 146.4(12)(*d*)).

“holder”

Subsection 146.4(1) defines “holder” of a disability savings plan of a beneficiary at any time to mean each of the following:

(a) An entity that has, at that time, rights as an entity with whom the issuer entered into the plan. – See the commentary on the definition “disability savings plan” in this subsection for a description of those entities who are permitted to enter into a disability savings plan of a beneficiary;

(b) An entity that has, at that time, rights as a successor or assignee of another holder of the plan. – See the commentary on paragraph 146.4(4)(*b*) for a description of those entities who are permitted to acquire rights as a successor or assignee of a holder of a disability savings plan; and

(c) The beneficiary, if the beneficiary is not otherwise a holder of the plan under paragraph (a) or (b) but nevertheless has, at that time, rights under the plan to make decisions (either alone or with other holders of the plan) concerning the plan. The beneficiary will not be considered to be a holder of the plan if the beneficiary's only such right is to direct that disability assistance payments be made as provided for in subparagraph 146.4(4)(*n*)(iii).

As illustrated in the following examples, a disability savings plan may have several holders throughout its existence and more than one holder at any given time.

Example 1

The mother and father of a minor child jointly establish a disability savings plan for the child. – The parents are joint holders of the plan.

Example 2

A father establishes a disability savings plan for his child. The plan provides for decisions regarding the plan to be made solely by the father until the child reaches the age of majority, and then to be made jointly with the child. – The father is the sole holder of the plan until the child reaches the age of majority, at which time the father and the child become joint holders of the plan.

Example 3

The mother and father of an adult child with a mental impairment are the legal guardians of the child. The father establishes a disability savings plan for the child. Upon the father's death, the mother acquires the father's rights under the plan. – The father and mother are successive holders of the plan.

Example 4

A single mother, of a child with a physical impairment, establishes a disability savings plan for the child. The mother dies while the child is still a minor. The Children's Aid Society assumes custody and care of the child, and acquires the mother's rights and obligations under the disability savings plan. Upon reaching the age of majority, the child acquires all rights and obligations under the plan. – The mother, the Children's Aid Society and the child are successive holders of the plan.

In practice, the holders of a disability savings plan will have the principal decision making authority with respect to the plan, which could include, for example, directing investments and the amount and timing of payouts.

A number of the registration rules in subsection 146.4(4) relate to holders of registered disability savings plans.

- Paragraph 146.4(4)(*b*) allows a disability savings plan to provide for rights as a successor or assignee of a holder of the plan to be acquired only by entities described in that paragraph.
- Paragraph 146.4(4)(*c*) requires that a disability savings plan provide that an entity (other than a legal parent) cease to be a holder of the plan if the entity ceases to be a qualifying person in relation to the beneficiary.
- Paragraph 146.4(4)(*d*) requires that a disability savings plan provide for there to be at least one holder of the plan at all times.
- Paragraph 146.4(4)(*e*) requires that a disability savings plan prohibit a new holder of the plan from exercising their rights as a holder (except to the extent otherwise permitted by the Minister or the specified Minister) until such time as the issuer has been advised of the entity having become a holder and been provided with the new holder's Social Insurance Number or business number, as the case may be. The issuer is then required, by new paragraph 146.4(13)(*a*), to so notify the specified Minister.

A holder of a registered disability savings plan will be subject to the provisions of the Act that impose sanctions relating to such plans. This includes new subsection 160.21(1), which makes holders jointly liable with the beneficiary (or the beneficiary's estate) for taxes arising in connection with the deregistration of a non-compliant plan. It also includes new Part XI, which imposes taxes on holders in connection with various transactions relating to the plan, such as the acquisition of a non-qualifying investment or the disposition of an asset for inadequate consideration.

"lifetime disability assistance payments"

Subsection 146.4(1) defines "lifetime disability assistance payments" under a disability savings plan of a beneficiary to be disability assistance payments (as defined in this subsection)

- that are identified under the terms of the plan to be lifetime disability assistance payments, and
- that, once they begin to be paid, are payable at least annually until the beneficiary dies (or the plan is terminated).

This definition is primarily relevant for two of the registration conditions set out in subsection 146.4(4).

- Paragraph 146.4(4)(*k*), which generally requires that lifetime disability assistance payments commence no later than the end of the year in which the beneficiary turns 60 years of age, and
- Paragraph 146.4(4)(*l*), which sets a maximum limit on the amount of lifetime disability assistance payments that a registered disability savings plan can make in any given year.

"plan trust"

Subsection 146.4(1) defines "plan trust" in relation to a disability savings plan to be the trust governed by the plan. This definition is provided simply for ease of reference.

"qualifying person"

Subsection 146.4(1) defines "qualifying person" in relation to a beneficiary of a disability savings plan at any time.

The following entities are qualifying persons in relation to a minor beneficiary:

(i) a legal parent of the beneficiary,

(ii) a guardian, tutor, curator or other individual who is legally authorized, at the time in question, to act on behalf of the beneficiary, and

(iii) a public department, agency or institution that is legally authorized, at the time in question, to act on behalf of the beneficiary.

The entities described in (ii) and (iii) above are also qualifying persons in relation to a beneficiary who is of the age of majority but not contractually competent to enter into a disability savings plan. This means that, while a legal parent is automatically considered to be a qualifying person in relation to a minor child, they are considered to be a qualifying person in relation to an adult child only if the child is not contractually competent and the parent is legally authorized to act on behalf of the child.

There are no qualifying persons in relation to a beneficiary who is of the age of majority and contractually competent.

This definition is relevant for the following provisions:

- Clause (*a*)(ii)(B) of the definition "disability savings plan" in subsection 146.4(1), which allows a disability savings plan of a beneficiary to be established by an entity that is, at the time the plan is established, a qualifying person in relation to the beneficiary.
- Subparagraph 146.4(4)(*b*)(iv), which allows an entity to acquire rights as a successor or assignee of a holder of a disability savings plan of a beneficiary if the entity is, at the time the rights are acquired, a qualifying person in relation to the beneficiary.
- Paragraph 146.4(4)(*c*), which requires that an entity (other than a legal parent) cease to be a holder of a registered disability savings plan if the entity ceases to be a qualifying person in relation to the plan beneficiary.

"registered disability savings plan"

Subsection 146.4(1) defines "registered disability savings plan" to be a "disability savings plan" (as defined in this subsection) that satisfies the conditions in subsection 146.4(2).

- Paragraph 146.4(2)(*a*) requires that, before entering into the plan, the issuer receive written notification from the Minister of National Revenue that, in the Minister's opinion, a plan with identical terms would, if entered into, comply with the conditions in subsection 146.4(4).
- Paragraph 146.4(2)(*b*) requires that the issuer be provided, at or before the time the plan is entered into, with the Social Insurance Numbers of the beneficiary and of each of the entities entering into the plan.
- Paragraph 146.4(2)(*c*) requires that, except in transfer situations, the beneficiary be resident in Canada when the plan is entered into.

By virtue of this definition, a disability savings plan that satisfies the conditions in subsection 146.4(2) is a registered plan as of the time it is entered into. Unlike other registered plans (e.g., registered retirement savings plans, registered education savings plans), there is no requirement that the Minister of National Revenue accept the particular plan for registration.

However, if the conditions set out in subsection 146.4(3) are not subsequently satisfied, that subsection deems the plan never to have been a registered disability savings plan (i.e., the registered status conferred by subsection 146.4(2) is rescinded retroactively to the time when the plan was entered into). Subsection 146.4(3) requires that, within 60 days of the plan being entered into, the issuer notify the "specified Minister" (as defined in this subsection) of the plan's existence, and that the issuer do so in prescribed form containing prescribed information. That subsection also requires that, within 120 days of the plan being entered into, any pre-existing registered disability savings plan of the beneficiary be terminated.

The definition "registered disability savings plan" also excludes a plan to which subsection 146.4(10) applies. Under that subsection, a registered disability savings plan that is non-compliant (as described in subsection 146.4(11) and subject to subsection 146.4(12)) ceases, as of the time that it becomes non-compliant, to be a registered plan.

"specified Minister"

Subsection 146.4(1) defines "specified Minister" to be the Minister designated for purposes of the *Canada Disability Savings Act*. This will be the Minister for Human Resources and Social Development. (By virtue of subsection 248(1), references in this section to "Minister" – rather than "specified Minister" – mean the Minister of National Revenue.)

"specified year"

Subsection 146.4(1) defines "specified year" for a disability savings plan as

- a calendar year in which a medical doctor certifies in writing that the beneficiary's state of health is such that, in the doctor's opinion, the beneficiary is not likely to survive more than five years, and
- each of the five calendar years following the year of certification.

However, a year will not qualify as a specified year unless the medical certificate has been provided to the issuer in or before the year in question. For example, if a doctor makes such a certification in respect of a registered disability savings plan beneficiary in 2011, but the issuer is not provided with the certification until 2012, only the years from 2012 to 2016 are specified years for the plan.

This definition is relevant for paragraph 146.4(4)(*l*) and subparagraph 146.4(4)(*n*)(i). These provisions limit the amount of disability assistance payments that can be paid from a registered disability savings plan in a calendar year, except if the year is a specified year.

Registered status

ITA
146.4(2)

New subsection 146.4(2) of the Act sets out the conditions that must be satisfied in order for a disability savings plan to be a registered disability savings plan, as defined in new subsection 146.4(1).

Paragraph 146.4(2)(*a*) requires that, before entering into the plan, the issuer of the plan receive written notification from the Minister of National Revenue that, in the Minister's opinion, a plan with identical terms would, if entered into, comply with the conditions in subsection 146.4(4) – as would be the case if the plan were issued under a specimen plan that had previously been approved by the Minister. (Refer to the commentary on subsection 146.4(4) for further information.)

Paragraph 146.4(2)(*b*) requires that the issuer be provided, at or before the time the plan is entered into, with the Social Insurance Numbers of the beneficiary and of each of the entities entering into the plan. In other words, the plan cannot be established before this information is provided to the issuer.

Paragraph 146.4(2)(*c*) requires that, except in transfer situations, the beneficiary be resident in Canada when the plan is entered into.

By virtue of the definition "registered disability savings plan", a disability savings plan that satisfies the conditions in this subsection is a registered plan as of the time it is entered into. Unlike other registered plans, there is no requirement that the Minister of National Revenue accept the particular plan for registration.

However, if the conditions set out in subsection 146.4(3) are not subsequently satisfied, that subsection deems the plan never to have been a registered disability savings plan (i.e., the registered status conferred by subsection 146.4(2) is rescinded retroactively to the time when the plan was entered into). (Refer to the commentary on subsection 146.4(3) for further information.)

Registered status nullified

ITA
146.4(3)

New subsection 146.4(3) of the Act deems a disability savings plan never to have been a registered disability savings plan if the conditions set out in that subsection are not met. The effect of this provision is that the registered status that was automatically conferred on the plan by virtue of subsection 146.4(2) is rescinded retroactively to the time when the plan was entered into. (Refer to the commentary on subsection 146.4(2) for further information.)

Under paragraph 146.4(3)(*a*), the issuer is required, within 60 days of the plan being entered into, to notify the "specified Minister" (i.e., the Minister of Human Resources and Social Development) of the plan's existence, and to do so in prescribed form containing prescribed information.

If, at the time the plan was entered into, the beneficiary was a beneficiary under another registered disability savings plan, paragraph 146.4(3)(*b*) requires that the other plan be terminated within 120 days of the new plan being entered into (or by such later day as the specified Minister considers reasonable in the circumstances). If the pre-existing plan is not terminated within the specified timeframe, it maintains its registered status, but the registration of the new plan is nullified by the application of this subsection. This ensures that, except for the time that it takes to process a transfer from one issuer to another, a beneficiary should not have more than one registered disability savings plan at any given time.

Plan conditions

ITA
146.4(4)

New subsection 146.4(4) of the Act sets out conditions applicable to registered disability savings plans.

In order for a disability savings plan to be a registered disability savings plan, new paragraph 146.4(2)(*a*) requires that the issuer have received prior notification from the Minister of National Revenue that, in the Minister's opinion, a plan identical to the plan would, if entered into, comply with the conditions in this subsection.

In order for a registered disability savings plan to maintain its registered status, new paragraph 146.4(11)(*a*) of the Act (in conjunction with new subsection 146.4(10) of the Act) requires that the plan continue to comply with the conditions in this subsection. Failure to administer a registered disability savings plan in accordance with its terms will also generally cause the plan to be deregistered. (Refer to the commentary on subsections 146.4(10) to (12) for further information.)

ITA
146.4(4)(*a*)

Under new paragraph 146.4(4)(*a*) of the Act, a registered disability savings plan must stipulate that it is to be operated exclusively for the benefit of the beneficiary. Given the difficulty inherent in having to determine if a registered disability savings plan is always being administered in accordance with this particular plan term, failure to so administer will not cause the plan to be deregistered. However, if the beneficiary (or the beneficiary's legal representative) is of the opinion that the plan is not being operated exclusively for the benefit of the beneficiary, this explicit provision in the plan should assist in seeking legal recourse for the beneficiary to acquire control of the plan from the existing holders.

Paragraph 146.4(4)(*a*) also requires that the plan stipulate that the designation of the beneficiary is irrevocable, and that no right of the beneficiary to receive payments from the plan is capable of surrender or assignment.

ITA
146.4(4)(*b*) to (*e*)

New paragraphs 146.4(4)(*b*) to (*e*) contain rules relating to holders of a disability savings plan.

Paragraph 146.4(4)(b)

Paragraph 146.4(4)(*b*) requires that the plan allow an entity to acquire rights as a successor or assignee of a holder of the plan only if the entity is one of the following:

- the beneficiary,
- the beneficiary's estate,
- a current holder of the plan,
- a qualifying person in relation to the beneficiary at the time the rights are acquired, or
- a legal parent of the beneficiary who was previously a holder of the plan. This would allow, for example, a parent-initiated plan to give the beneficiary the option of assuming control of the plan at a given age and to allow the beneficiary to request that control revert back to the parent in the event the beneficiary has difficulty managing the plan.

Upon acquiring such rights, the successor or assignee becomes a holder of the plan. (Refer to the commentary on the definitions "holder" and "qualifying person" in subsection 146.4(1) for further information.)

Paragraph 146.4(4)(c)

Paragraph 146.4(4)(*c*) requires that the plan provide that an entity (other than a legal parent) cease to be a holder of the plan if the entity ceases to be a qualifying person in relation to the beneficiary. Assume, for example, that an individual who is the guardian of an orphaned minor child with a physical impairment establishes a disability savings plan for the child. The plan must provide for the individual to cease to be a holder of the plan if, and when, the individual ceases to be the child's guardian (e.g., when the child reaches the age of majority). Paragraph 146.4(4)(*d*) requires that the plan terms anticipate this eventuality and provide for a successor planholder.

The exclusion of legal parents from this requirement allows (but does not require) a plan established by a legal parent when the child was a minor to continue being controlled by the parent after the beneficiary reaches the age of majority, regardless of the beneficiary's capacity.

Paragraph 146.4(4)(d)

Paragraph 146.4(4)(*d*) requires that the plan provide for there to be at least one planholder at all times. Consequently, the plan terms must anticipate the possibility that a holder will cease to be a holder – because, for example, the holder has died or is no longer permitted, by virtue of paragraph 146.4(4)(*c*), to be a planholder – and provide a means of establishing a successor planholder. (See the commentary on paragraph 146.4(4)(*b*) for a description of those entities that are permitted to become successor holders of the plan.) Paragraph 146.4(4)(*d*) states that the plan may provide for the beneficiary (or the beneficiary's estate) to automatically acquire rights as a successor or assignee of a planholder in order to ensure compliance with this requirement. (The legal representative of an incompetent beneficiary acquiring such rights may, within the constraints of the laws governing the legal representative, exercise those rights on behalf of the beneficiary.)

Paragraph 146.4(4)(e)

Paragraph 146.4(4)(*e*) requires a plan to prohibit a new holder from exercising their rights as a holder (except to the extent otherwise permitted by either the Minister or the specified Minister) until such time as the issuer has been advised of the entity having become a holder and been provided with the new holder's Social Insurance Number or business number, as the case may be.

When an entity becomes a holder of a disability savings plan after the plan is entered into, the issuer is required, under new paragraph 146.4(13)(*a*), to so inform the specified Minister no later than 60 days after the later of the day on which the issuer is advised of the entity having become a holder and the day on which the issuer is provided with the new holder's Social Insurance Number or business number, as the case may be.

ITA
146.4(4)(*f*) to (*h*)

New paragraphs 146.4(4)(*f*) to (*h*) contain restrictions on contributions to a registered disability savings plan. (By virtue of the definition "contribution" in subsection 146.4(1), these restrictions do not apply to grants and bonds paid into the plan under the *Canada Disability Savings Act*.)

Paragraph 146.4(4)(f)

Paragraph 146.4(4)(*f*) requires that the plan prohibit contributions from being made in a year in respect of which the beneficiary is no longer a DTC-eligible individual. (Refer to the commentary on the definition "DTC-eligible individual" in subsection 146.4(1) for further information.) It also requires that the plan prohibit contributions after the death of the beneficiary.

Paragraph 146.4(4)(g)

Paragraph 146.4(4)(*g*) requires that the plan prohibit contributions from being made after the year in which the beneficiary turns 59 years of age, or at a time when the beneficiary is not resident of Canada. It also requires that the plan prohibit a contribution from being made if the total of the contribution and all other contributions to registered disability savings plans of the beneficiary would exceed $200,000. The prohibitions in paragraph 146.4(4)(*g*) do not apply to contributions made by way of a transfer made in accordance with new subsection 146.4(8).

Paragraph 146.4(4)(h)

Paragraph 146.4(4)(*h*) requires that the plan prohibit contributions by an entity that is not a holder of the plan, except with the written consent of a holder of the plan. This allows the holder to schedule contributions so as to maximize access to grants payable under the *Canada Disability Savings Act* and to ensure that contributions are in compliance with the requirements set out in paragraphs 146.4(4)(*f*) and (*g*).

ITA
146.4(4)(*i*) to (*n*)

New paragraphs 146.4(4)(*i*) to (*n*) contain requirements relating to payments from a registered disability savings plan.

Paragraph 146.4(4)(i)

Paragraph 146.4(4)(*i*) requires that the plan provide that no payments may be made from the plan other than

- disability assistance payments, which are defined by subsection 146.4(1) to be any payment made from the plan to the beneficiary or the beneficiary's estate,
- a transfer to another registered disability savings plan of the beneficiary in accordance with subsection 146.4(8), and
- repayments that the plan may be required to make to the government under the *Canada Disability Savings Act*.

Paragraph 146.4(4)(j)

Paragraph 146.4(4)(*j*) requires that the plan prohibit a disability assistance payment being made from the plan if the payment would cause the value of the plan's assets to fall below the assistance holdback amount. (See the commentary on the definition "assistance holdback amount" in subsection 146.4(1) for further information). The purpose of this provision is to ensure that the plan has sufficient assets to satisfy any potential repayment obligations under the *Canada Disability Savings Act*.

Paragraph 146.4(4)(k)

Paragraph 146.4(4)(*k*) requires that the plan provide for lifetime disability assistance payments to commence no later than the end of the year in which the beneficiary turns 60 years of age. Subsection 146.4(1) defines "lifetime disability assistance payments" as disability assistance payments (simply, payments from the plan to the beneficiary) that are identified under the terms of the plan to be lifetime disability assistance payments and that, once they begin to be paid, are payable at least annually until the beneficiary dies or the plan is terminated. Paragraph 146.4(4)(*l*) sets a limit on the total amount of lifetime disability assistance payments that can be made in any year. (See the commentary on that paragraph for further information.)

If the plan is established in the year the beneficiary turns 60 years of age or a later year (which could occur only if the plan is being set up to receive funds transferred from another registered disability savings plan of the beneficiary), paragraph 146.4(4)(*k*) does not require the plan to provide for the commencement of lifetime disability assistance payments until the end of the year following the year in which the plan is established. (The plan may, however, be required to make disability assistance payments in the year of transfer to satisfy an undertaking referred to in paragraph 146.4(8)(*d*).)

Paragraph 146.4(4)(l)

Paragraph 146.4(4)(*l*) requires that the plan limit the total amount of lifetime disability assistance payments that can be made in any given year to the amount determined in accordance with the formula set out in that paragraph. The application of the formula allows the payment of the assets of the plan to be spread out relatively evenly over the remainder of the beneficiary's lifetime. The annual limit imposed under paragraph 146.4(4)(*l*) does not apply if the year in question is a "specified year" for the plan (as defined in subsection 146.4(1)). Generally speaking, if the issuer of the plan has been provided with the certification of a medical doctor that the beneficiary is not likely to survive more than 5 years, the year of certification and the following five years are specified years.

The formula set out in paragraph 146.4(4)(*l*) is as follows:

$$A/(B + 3 - C) + D$$

Variable A is generally the fair market value of the plan's assets at the beginning of the year. However, if the plan holds a "locked-in" annuity (as described below), that annuity is disregarded in determining the value of the plan's assets.

Variable B is the greater of 80 and the beneficiary's age in whole years at the beginning of the year for which the limit is being determined.

Variable C is the beneficiary's age in whole years at the beginning of the year for which the limit is being determined.

After the beneficiary attains 80 years of age, the annual limit on lifetime disability assistance payments determined under this formula will be one-third of the value of the plan's assets at the beginning of the year (assuming that the plan does not hold a locked-in annuity as referred to in the description of D below).

Variable D applies only if, at the beginning of the year for which the limit is being determined, the plan trust holds an annuity (referred to in this commentary as a "locked-in" annuity) that is described in paragraph (*c*) – but not in paragraph (*b*) – of the definition "qualified investment" in new subsection 205(1). An annuity described in paragraph (*c*) of that definition is also described in paragraph (*b*) only if the holder has the right to surrender the annuity at any time. Where the plan trust holds a locked-in annuity at the beginning of the year, variable D is the total amount of periodic payments received by the trust in the year under the annuity. If the trust disposed of the right to such payments in the year for which the limit is being determined, variable D is an estimate of the payments that the trust would otherwise have received. This ensures that, where a trust governed by a registered disability savings plan holds a locked-in annuity, the annual limit on lifetime disability assistance payments will never be less than the annuity payments to be received by the trust in that year.

By virtue of subsections 146.4(6) and (7), the beneficiary is required to include in income for a year the taxable portion of each lifetime disability assistance payment received in the year. (Refer to the commentary on those subsections for more information.)

The amount determined by the formula in paragraph 146.4(4)(*l*) is also relevant for paragraph 146.4(4)(*n*). (Refer to the commentary on that paragraph for further information.)

Paragraph 146.4(4)(m)

Paragraph 146.4(4)(*m*) requires that the plan specify whether or not disability assistance payments that are not lifetime disability assistance payments are permitted.

Paragraph 146.4(4)(n)

Paragraph 146.4(4)(*n*) requires that the plan contain certain provisions that will apply in a particular calendar year, if the total of all grants and bonds paid under the *Canada Disability Savings Act* into all registered disability savings plans of the beneficiary in all previous calendar years exceeds the total of all private contributions paid into all such plans in all such years. These plan provisions serve to impose limits on, and ensure that the beneficiary has certain rights relating to, disability assistance payments that may be made in the particular calendar year (which is referred to, in these notes, as the "restricted year").

Under subparagraph 146.4(4)(*n*)(i), the plan must (regardless of the beneficiary's age in the restricted year) limit the total amount of disability assistance payments that can be paid to the beneficiary in the restricted year to the amount determined for that year under the formula set out in paragraph 146.4(4)(*l*). In other words, the limit that would otherwise apply to lifetime disability assistance payments, if any, made from the plan in the restricted year applies instead to all disability assistance payments made from the plan in that year (whether as lifetime disability assistance payments or otherwise). In applying this maximum limit on withdrawals, certain payments made from the plan following a transfer of funds from another registered disability savings plan of the beneficiary are disregarded.

The maximum annual withdrawal limit imposed under subparagraph 146.4(4)(*n*)(i) does not apply if the year in question is a "specified year" for the plan (as defined in subsection 146.4(1)). Generally speaking, if the issuer of the plan has been provided with the certification of a medical doctor that the beneficiary is not likely to survive more than 5 years, the year of certification and the following five years are specified years. Nor does the limit apply to payments made to the beneficiary's estate.

If the beneficiary attained 59 years of age before the restricted year, subparagraph 146.4(4)(*n*)(ii) creates a minimum annual withdrawal requirement. Specifically, it requires that the plan provide for the total of all disability assistance payments made to the beneficiary in the restricted year (whether as lifetime disability assistance payments or otherwise) to be not less than the amount determined for that year under the formula set out in paragraph 146.4(4)(*l*). The interaction of this subparagraph with subparagraph 146.4(4)(*n*)(i) means that, for years after the beneficiary attains 59 years of age, the plan must provide for annual disability assistance payments that are no more than, and no less than, the amount determined for the year under the formula set out in paragraph 146.4(4)(*l*).

The requirements of subparagraph 146.4(4)(*n*)(ii) do not apply to the extent that the value of the plan's assets are insufficient to satisfy the minimum payment requirement. This could be the case, for example, where the value of the assets decline precipitously during the restricted year, or where there has been a transfer to a new registered disability savings plan of the beneficiary in the restricted year and the receiving plan undertakes (in accordance with the requirements of paragraph 146.4(8)(*d*)) to make any residual payments that the transferring plan would otherwise have been required to make in that year. Nor do the requirements of subparagraph 146.4(4)(*n*)(ii) apply to disability assistance payments made to the beneficiary's estate.

If the beneficiary attained 27 years of age but not 59 years of age before the restricted year, subparagraph 146.4(4)(*n*)(iii) requires that the plan provide the beneficiary with the right to direct that disability assistance payments be made from the plan to the beneficiary in the restricted year. The minimum age requirement is intended to ensure that beneficiary-directed disability assistance payments do not trigger a repayment of grants and bonds paid into the plan while the beneficiary was a minor.

In providing the beneficiary with this right, the plan must ensure compliance with the constraints imposed by paragraph 146.4(4)(*j*) and subparagraph 146.4(4)(*n*)(i). This means that a beneficiary-directed payment cannot be made if the payment would cause the value of the plan's assets to fall below the assistance holdback amount. It also means that beneficiary-directed payments, when added to all other disability assistance payments made to the beneficiary in the restricted year (whether as lifetime disability assistance payments or otherwise), must not exceed the amount determined for that year under the formula set out in paragraph 146.4(4)(*l*).

Subparagraph 146.4(4)(*n*)(iii) will be of relevance primarily to an adult beneficiary who would otherwise have little or no say in the amount and timing of disability assistance payments to be made from the plan, typically because the plan was established by the beneficiary's parents when the beneficiary was a minor. (The legal representative of an incompetent beneficiary acquiring such rights may, within the constraints of the laws governing the legal representative, exercise those rights on behalf of the beneficiary.)

ITA
146.4(4)(*o*)

Paragraph 146.4(4)(*o*) requires the plan to provide that the issuer will, when directed to do so by the holders of the plan, transfer all the property held by the plan trust (or an amount equal to its value) to another registered disability savings plan of the beneficiary, together with all information in the issuer's possession that may be considered necessary for the new plan to comply with the requirements of this Act and with any conditions and obligations imposed under the *Canada Disability Savings Act*.

ITA
146.4(4)(*p*)

Paragraph 146.4(4)(*p*) deals with the termination of the plan following the beneficiary's death or cessation of DTC eligibility.

Specifically, if, in respect of a particular year following the year in which the plan was entered into, the beneficiary fails to qualify as a "DTC-eligible individual" (as defined in subsection 146.4(1)), the plan must provide for any amounts remaining in the plan (after taking into account any repayments under the *Canada Disability Savings Act*) to be paid to the beneficiary, and for the plan to be terminated, by the end of the year following the particular year. Although the plan must provide for termination within this timeframe, paragraph 146.4(12)(*d*) allows the Minister to effectively suspend the requirement for termination, if the beneficiary's DTC status is uncertain or in dispute, until such time as the issue is resolved. (Refer to the commentary on that paragraph for further information.)

Similarly, in the event of the beneficiary's death, the plan must provide for any amounts remaining in the plan (after taking into account any repayments under the *Canada Disability Savings Act*) to be paid to the beneficiary's estate, and for the plan to be terminated, by the end of the year following the year of the beneficiary's death.

Trust not taxable

ITA
146.4(5)

New subsection 146.4(5) of the Act generally provides that no income tax is payable by a trust governed by a registered disability savings plan. However, there are situations in which the trust is taxable.

- Under paragraph 146.4(5)(a), tax is payable by the trust on all its taxable income for a year if the trust borrowed money in the year, or if it borrowed money in a preceding year and had not repaid it before the beginning of the year.
- If the trust is not otherwise taxable in the year under paragraph 146.4(5)(*a*), tax is payable under paragraph 146.4(5)(*b*) on the trust's taxable income for the year from businesses carried on in the year. Tax is also payable on any income earned by the trust on investments that are not "qualified investments" as defined in new subsection 205(1) and on any capital gains realized from the disposition of those investments. For the purposes of paragraph 146.4(5)(*b*), "income" includes dividends described by section 83 of the Act, and capital gains are fully taxable.

Taxation of disability assistance payments

ITA
146.4(6)

New subsection 146.4(6) of the Act provides for a portion of each disability assistance payment made from a registered disability savings plan to be included in the income of the beneficiary for the year in which the payment is made. If the beneficiary is not alive at that time, the amount is included in the income of the beneficiary's estate for the year of the payment.

The amount included in income under this subsection is the amount by which the payment exceeds the non-taxable portion of the payment as determined under new subsection 146.4(7). In general terms, the proportion of the payment that is non-taxable is the same as the proportion that total contributions is to the total value of the plan's assets.

This provision, in effect, allows contributions to be paid out of the plan on a tax-free basis (recognizing that contributions are not deductible), while taxing grants and bonds paid into the plan under the *Canada Disability Savings Act* and investment income earned in the plan.

Non-taxable portion of disability assistance payment

ITA
146.4(7)

New subsection 146.4(7) of the Act sets out the manner for determining the non-taxable portion of a disability assistance payment for the purpose of new subsection 146.4(6).

In general terms, the proportion of a disability assistance payment that is non-taxable is the same as the proportion that total contributions is to the total value of the plan's assets. More specifically, the non-taxable portion of a disability assistance payment is the amount determined by the formula

$$A \times B/C$$

Variable A is the amount of the disability assistance payment.

Variable B, in general terms, represents the contributions paid to registered disability savings plans of the beneficiary that have not been used in determining the non-taxable portion of previous disability assistance payments, i.e., the running balance of amounts that remain to be withdrawn on a non-taxable basis. More specifically, Variable B is the amount by which contributions previously made to registered disability savings plans of the beneficiary exceed the non-taxable portions of all disability assistance payments previously made from registered disability savings plans of the beneficiary.

Variable C is the amount by which the value of the plan's assets immediately before the payment exceeds the assistance holdback amount in relation to the plan. The exclusion of the assistance holdback amount reflects the conditional nature of grants and bonds paid under the *Canada Disability Savings Act* for the 10-year period following the payment of the grant or bond into the plan.

Subsection 146.4(7) provides that the amount determined thereunder will never be greater than the amount of the disability assistance payment. This deals with the fact that, in certain circumstances, the value of Variable B may exceed the value of Variable C. In such circumstances, the non-taxable portion of the disability assistance payment would, but for this provision, exceed the amount of the payment itself. While this would have no impact on the taxation of the payment – it would be fully non-taxable under subsection 146.4(6) – it would unfairly reduce the running balance of amounts that can subsequently be withdrawn on a tax-free basis.

Transfer of funds

ITA
146.4(8) and (9)

New subsections 146.4(8) and (9) of the Act provide rules governing transfers from one registered disability savings plan of a beneficiary to another.

The transfer of an amount from a registered disability savings plan of a beneficiary is in accordance with subsection 146.4(8) if the conditions set out in that subsection are met. These conditions are as follows:

- Paragraph 146.4(8)(*a*) requires that the transfer be to another registered disability savings plan of the beneficiary.
- Paragraph 146.4(8)(*b*) requires that the transferring plan be terminated immediately following the transfer. This is to ensure that, except for the period it takes to process a transfer, there is never more than one registered disability savings plan of a beneficiary at any given time.

- Paragraph 146.4(8)(*c*) requires that the issuer of the transferring plan provide the issuer of the receiving plan with any information in its possession that may reasonably be considered necessary for the new plan to comply with the requirements of this Act and with any conditions and obligations imposed under the *Canada Disability Savings Act*. This would include, for example, information regarding contributions to, and payments from, the transferring plan that will be needed for the issuer of the receiving plan to calculate, under subsection 146.4(7), the non-taxable portion of any disability assistance payment made from the receiving plan. It would also include information relating to any transferred amounts that the receiving plan may subsequently be required to repay under the *Canada Disability Savings Act*.
- Paragraph 146.4(8)(*d*) requires that, if the beneficiary attained 59 years of age before the year in which the transfer takes place (i.e., the transfer takes place in or after the year in which lifetime disability assistance payments are required by paragraph 146.4(4)(*k*) to commence), the issuer of the receiving plan undertake to pay to the beneficiary any disability assistance payments that the transferring plan would have been required to make during the remainder of the year had the transfer not taken place. This would include the residual amount of any minimum payments that the transferring plan would otherwise have been required to make in accordance with subparagraph 146.4(4)(*n*)(ii).

In accordance with the registration condition in new paragraph 146.4(4)(*i*), a transfer in accordance with subsection 146.4(8) is one of three types of payments that a registered disability savings plan is permitted to make.

New subsection 146.4(9) of the Act provides that a transfer from a registered disability savings plan in accordance with subsection 146.4(8) will not (solely because of the transfer) be included in any taxpayer's income.

Non-compliance – Cessation of registered status

ITA
146.4(10) to (12)

New subsections 146.4(10) to (12) of the Act contain provisions dealing with non-compliant registered disability savings plans.

Subsection 146.4(10) describes the consequences of a registered disability savings plan being non-compliant; subsection 146.4(11) sets out the circumstances in which a plan is considered to be non-compliant; and subsection 146.4(12) provides authority for the Minister of National Revenue to modify the application of subsection 146.4(11).

Subsection 146.4(10)

Subsection 146.4(10) outlines the consequences of a registered disability savings plan becoming non-compliant.

If a registered disability savings plan becomes non-compliant at any time, it loses its registered status, as of that time, by virtue of the application of paragraph 146.4(10)(*a*).

If a plan loses its registered status under paragraph 146.4(10)(*a*), paragraph 146.4(10)(*b*) deems the plan to have made a disability assistance payment to the beneficiary (or, if the beneficiary is deceased, to the beneficiary's estate) immediately before the deregistration of the plan. The deemed payment is equal to the value of the plan's assets immediately before deregistration less the "assistance holdback amount" in relation to the plan as defined in subsection 146.4(1). (The exclusion of the assistance holdback amount is in recognition of the fact that the plan will be required by the *Canada Disability Savings Act* to repay this amount to the government.) By virtue of subsection 146.4(6), the taxable portion of this deemed payment is included in the income of the beneficiary (or the beneficiary's estate) for the year in which the payment is deemed to have been made.

If a plan becomes deregistered under paragraph 146.4(10)(*a*) because all or part of the assistance holdback amount in relation to the plan is included in a disability assistance payment in contravention of paragraph 146.4(4)(*j*), paragraph 146.4(10)(*c*) deems the plan to have made an additional disability assistance payment equal to the portion of the assistance holdback amount so paid out. As in paragraph 146.4(10)(*b*), the payment is deemed to have been made immediately before the plan's deregistration, and to have been made to the beneficiary or the beneficiary's estate, as the case may be. Paragraph 146.4(10)(*c*) also deems the non-taxable portion of the payment to be nil, which results in the whole amount of the deemed payment being included in income. New paragraph 60(*z*) of the Act provides for an offsetting deduction on repayment of this amount to the government.

Subsection 146.4(11)

Subsection 146.4(11) of the Act describes the circumstances in which a registered disability savings plan is considered to be non-compliant.

A registered disability savings plan is non-compliant under paragraph 146.4 (11)(*a*) at any time at which it fails to comply with a condition in subsection 146.4(4).

A registered disability savings plan is non-compliant under paragraph 146.4(11)(*b*) at any time at which there is a failure to administer the plan in accordance with its terms. An exception is made for a failure to administer the terms of the plan which stipulate – as required by new subparagraph 146.4(4)(*a*)(i) – that the plan is to be operated exclusively for the benefit of the beneficiary. This exception recognizes the difficulty inherent in determining if a registered disability savings plan is being operated exclusively for the benefit of the beneficiary. Although such a failure will not cause the plan to become non-compliant, the explicit inclusion of this stipulation in the plan terms should assist the beneficiary (or the beneficiary's legal representative) in seeking legal recourse to acquire control of the plan if they have reason to believe that the plan is not being operated exclusively for the beneficiary's benefit.

A registered disability savings plan is non-compliant under paragraph 146.4(11)(*c*) at any time at which a person fails to comply with a condition or an obligation imposed under the *Canada Disability Savings Act*, but only if the specified Minister (i.e., the Minister of Human Resources and Social Development) is of the opinion that the plan should be considered non-compliant (and thus deregistered) because of the failure, and so notifies the Minister of National Revenue.

Subsection 146.4(12)

Subsection 146.4(12) of the Act provides authority for the Minister of National Revenue to modify the application of paragraphs 146.4(11)(*a*) and (*b*). In some cases, the effect is that deregistration is avoided; in others, deregistration is deferred.

Under paragraph 146.4(12)(*a*), if a plan does not comply with the conditions in subsection 146.4(4) or is not administered in accordance with its terms, the Minister may, if it is just and equitable to do so, waive the application of the paragraph in subsection 146.4(11) that would otherwise result in the plan being considered to be non-compliant. If the Minister waives the application of the relevant paragraph, the plan is not considered to be non-compliant and, accordingly, is not deregistered.

Under paragraph 146.4(12)(*b*), the Minister may deem the failure that causes a plan to be non-compliant to have occurred at a later time. This will have the effect of deferring the effective date of deregistration.

Paragraph 146.4(12)(*c*) deals with contributions made to a registered disability savings plan that are prohibited under any of paragraphs 146.4(4)(*f*) to (*h*). In general terms, those paragraphs prohibit contributions made after the beneficiary has died, ceased to be DTC-eligible, turned 60 years of age or ceased to be resident, as well as contributions in excess of a $200,000 lifetime limit and non-holder contributions made without consent.

Paragraph 146.4(12)(*c*) provides the Minister with the authority to waive the application of the provisions of subsection 146.4(11) that would otherwise cause the plan to become non-compliant when a non-permissible contribution has been made, if the contribution is withdrawn from the plan within such period of time as specified by the Minister.

Where the withdrawal condition is satisfied and the Minister agrees to the application of paragraph 146.4(12)(*c*), the prohibited contribution is deemed never to have been made, thus ensuring that it does not cause the plan to be considered non-compliant under subsection 146.4(11). In addition, the withdrawal is deemed not to be a disability assistance payment, thus ensuring that no portion of the payment is taxable under new subsection 146.4(6). Finally, the withdrawal is deemed not to be in contravention of paragraph 146.4(4)(*i*), thus ensuring that the plan is not deregistered for having made a non-permissible payment.

Paragraph 146.4(12)(*d*) deals with situations in which the beneficiary of a registered disability savings plan dies or ceases to be a DTC-eligible individual, and the plan is not terminated by the end of the following year, as required under paragraph 146.4(4)(*p*). Under normal circumstances, the plan would become non-compliant immediately after the deadline set out in paragraph 146.4(4)(*p*).

However, if the failure to terminate was due either to the issuer not being aware of the beneficiary having died or having ceased to be DTC-eligible or to there being some uncertainty with respect to the beneficiary's DTC status, paragraph 146.4(10)(*d*) allows the Minister to specify a later date as of which the plan must be terminated. (The date so chosen must, in the Minister's opinion, be sufficient to allow for the plan to be terminated in an orderly manner.) This later date is then considered to be the date as of which the Act and the plan required the plan to be terminated. If the plan is not subsequently terminated by that date, it becomes non-compliant at that time.

This provision will allow a registered disability savings plan in respect of which the beneficiary's DTC status is uncertain or in dispute to continue until such time as the issue is resolved. The practical effect of the provision is that, where the Minister is of the opinion that the beneficiary is no longer a DTC-eligible individual but the holders or the beneficiary disagree, the Minister can indicate that there is no requirement to terminate the plan until a definitive determination of the beneficiary's DTC status has been made. If DTC eligibility is subsequently confirmed, then no termination is (or was ever) required. If, on the other hand, it is determined that the beneficiary is no longer DTC-eligible, the Minister will set a new deadline as of which the plan has to be terminated.

Obligations of issuer

ITA
146.4(13)

New subsection 146.4(13) of the Act imposes obligations on the issuer of a registered disability savings plan. Where the issuer of a registered disability savings plan fails to comply with an obligation imposed under this subsection, the issuer will be subject to a penalty, under subsection 162(7) of the Act, equal to $25 per day of default (subject to a $100 minimum and a $2,500 maximum).

If an entity becomes a holder of a registered disability savings plan after the plan is entered into, paragraph 146.4(13)(*a*) requires that the issuer so notify the specified Minister (i.e., the Minister of Human Resources and Social Development). It requires that the notification be provided in prescribed form containing prescribed information, and that it be provided no later than 60 days after the later of (i) the day on which the issuer is so notified and (ii) the day on which the issuer is provided with the new holder's Social Insurance Number or business number, as the case may be. (The registration condition in new paragraph 146.4(4)(*e*) prohibits a new holder from exercising their rights as a holder before the issuer is provided with this information.)

Paragraph 146.4(13)(*b*) requires that the issuer of a registered disability savings plan not amend the plan without prior written notification from the Minister of National Revenue that, in the Minister's opinion, a plan with terms identical to the terms of the amended plan would comply with the conditions in subsection 146.4(4).

If the issuer of a registered disability savings plan becomes aware that the plan is (or is likely to become) non-compliant as described in paragraph 146.4(11)(*a*) or (*b*) – i.e., it does not comply with the conditions in subsection 146.4(4) or is not being administered in accordance with its terms – paragraph 146.4(13)(*c*) requires that the issuer notify the Minister of National Revenue and the Minister of Human Resources and Social Development of this fact within 30 days of becoming so aware. For this purpose, non-compliance is determined without regard for the discretionary provisions of subsection 146.4(12).

Paragraph 146.4(13)(*d*) requires that the issuer of a registered disability savings plan exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that a holder of the plan may become liable to pay tax, in connection with the plan, under new Part XI of the Act. That Part imposes taxes on registered disability savings plan holders in connection with various transactions relating to the plan, such as the acquisition of non-qualifying investments and the disposition of assets for inadequate consideration.

Clause 118

Joint and several liability – Registered disability savings plans

ITA
160.2 of the October 2, 2007 release or
160.21 of the Bill

The references to subsections 160.2(2.3), (2.4) and (6) in the explanatory notes to section 160.2 of the October 2, 2007 release should be read as subsections 160.21(1), (2) and (3) respectively.

The references to the word "director" in the explanatory notes to these subsections should be replaced by the word "holder".

The explanatory notes to section 160.21 of the Bill should be revised by adding the following after the explanatory note to subsection 160.21(3):

Assessment

ITA
160.21(4)

New subsection 160.21(4) of the Act provides that the Minister may assess a taxpayer in respect of an amount payable because of new section 160.21. New subsection 160.21(1) makes a holder of a registered disability savings plan jointly liable with a taxpayer for taxes arising in connection with the deregistration of the plan.

This amendment applies to the 2008 and subsequent taxation years.

Clause 120

Taxes in respect of registered disability savings plans

ITA
Part XI

The references to the word "director" in the explanatory notes to Part XI should be replaced by the word "holder".

Tax payable on non-qualified investment

ITA
206.1

The reference to the words "registered disability savings" in the first sentence of the explanatory note to section 206.1 should be read as "registered disability savings plan".

Income Tax Regulations

Clauses 126 and 127

Qualified investments

ITR
Part XLIX

The references to the word "director" in the explanatory notes to Part XLIX should be replaced by the word "holder".

Old Age Security Act

Clause 129

Definitions

OASA
2

"income"

The second paragraph of the explanatory note to OASA section 2 should be replaced by the following:

The definition of "income" is amended to exclude payments from a registered disability savings plan from the income base upon which certain benefits payable under that Act are calculated. This ensures that such payments are not included in income for purposes of the Guaranteed Income Supplement (GIS).

Part 14
Tax Amendments to Implement the 2007 Economic Statement

Amendments Relating to Income Tax

Income Tax Act

Clause 179

Tax rates applicable to individuals

ITA
117(2)

Subsection 117(2) of the Act provides the marginal rates of federal personal income tax.

Paragraph 117(2)(*a*) is amended to adjust the lowest rate of personal income tax for the 2007 and subsequent taxation years from 15.5% to 15%

This amendment applies to the 2007 and subsequent taxation years

The "appropriate percentage" used in computing the individual's non-refundable personal tax credits and alternative minimum tax will also reflect these rates, as adjusted for the 2007 and subsequent taxation years.

Clause 180

Personal credits

ITA
118(3.1) and (3.2)

Section 118 of the Act provides for the calculation of various personal tax credits. These include the basic personal credit, the credit in respect of a spouse or common-law partner and the credit that a single individual can claim for a wholly dependent relative. These credits are calculated by reference to the lowest personal tax rate (15% for the 2007 and subsequent taxation years) of the amount used in section 118 to compute the particular credit.

Subsection 118(3.1) provides, in addition to the annual increases provided under the indexing provisions, for annual increases to the amount used to compute an individual's basic personal credit (for 2006 to 2009 inclusive). Subsection 118(3.1) is amended to provide that the basic personal amount for 2007 and 2008 will be $9,600. In addition, this subsection is amended to provide that the basic personal amount for 2009 will be $10,100 and that for the 2010 and subsequent taxation years, the basic personal amount will be $10,100 plus the increase under the indexing provisions.

Subsection 118(3.2) provides, in addition to the annual increases provided under the indexing provisions, for annual increases to the amount used to compute the credit in respect of a spouse or common-law partner and the credit that a single individual may claim for a wholly dependent relative (for 2006 to 2009 inclusive). Subsection 118(3.2) is amended to provide that the credit in respect of a spouse or common-law partner and the credit that a single individual may claim for a wholly dependent relative for 2007 and 2008 will be based on an amount of $10,000. In addition, this subsection is amended to provide that the amount upon which these credits are based for 2009 will be $9,600 and that for the 2010 and subsequent taxation years, the amount will $10,100 plus the increase under the indexing provisions.

These amendments apply to the 2007 and subsequent taxation years.

Clause 181

"general rate reduction percentage"

ITA
123.4(1)

The amount of tax that a corporation pays under Part I of the Act on its taxable income – meaning, in the case of a non-resident corporation, its taxable income earned in Canada – for a taxation year is determined through a series of adjustments to the basic calculation of tax as 38 percent of the corporation's taxable income. These calculations provide for the special tax rate on small-business income, the abatement of tax in recognition of provincial income tax, and so on.

One important adjustment is found in section 123.4 of the Act. This section significantly reduces the effective rate of corporate tax on what it calls a corporation's "full-rate taxable income" for the taxation year. In broad terms, a corporation's full-rate taxable income for a taxation year is that amount of its taxable income that does not otherwise qualify for a lower tax rate or other favourable tax treatment. The section 123.4 reduction in tax payable is equal to that amount times the corporation's "general rate reduction percentage" for the taxation year.

A corporation's general rate reduction percentage for a taxation year is calculated according to the number of days in the taxation year that fall into a given calendar year, with each calendar year having an assigned percentage reduction.

This amendment increases those calendar year percentages, as shown in the following table:

Calendar year	2007	2008	2009	2010	2011	2012 and later
General rate reduction percentage (before amendment)	7%	7.5%	8%	9%	9.5%	9.5%
General rate reduction percentage (after amendment)	7%	8.5%	9%	10%	11.5%	13%

The effect of the amendment, which applies to the 2008 and subsequent taxation years, is to reduce the general corporate income tax rate to 15% in 2012 (taking into account the abatement for provincial tax and the elimination of the corporate surtax).

Clause 182

Small business deduction rate

ITA
125(1.1)

Section 125 of the Act in effect provides a lower tax rate under Part I of the Act for the first $400,000 of active business income of a Canadian-controlled private corporation (CCPC) for a taxation year than the rate that would otherwise apply. The special rate takes the form of a deduction, from tax otherwise payable, equal to the qualifying income of the CCPC times its "small business deduction rate" for the taxation year.

This amendment accelerates an already-legislated increase in the small business deduction rate that reduces the rate of tax that applies to this portion of a CCPC's business income. Specifically, the amendment provides that the small business deduction rate will increase to 17% for the 2008 and subsequent calendar years – one year earlier than under the existing rules. If a CCPC's taxation year begins before 2008, it will apply the changed rate in proportion to the number of days in the taxation year that are after 2007.

This amendment applies to the 2008 and subsequent taxation years.

Amendments to Implement the GST / HST Rate Reduction

Excise Tax Act

Clause 183

Definition "basic tax content"

ETA
123(1)

Subsection 123(1) of the *Excise Tax Act* (the "Act") contains definitions used in Part IX of the Act relating to the goods and services tax and the harmonized sales tax (GST/HST). The "basic tax content" of a person's property is generally the amount of tax under Part IX that the person was required to pay on the property and improvements thereto, after deducting any amounts (other than input tax credits) that the person was entitled to recover by rebate, remission or otherwise and after taking into account any depreciation in the value of the property. The basic tax content is generally used for the purposes of determining a person's liability for tax or eligibility for input tax credits in a number of cases where the person is deemed under Part IX to have supplied or acquired property.

Special rules apply to determine the basic tax content of selected listed financial institutions (as defined in subsection 225.2(1) of the Act) given the special rules applicable to those entities under Part IX of the Act. The description of G in subparagraph (*a*)(v) of the definition "basic tax content" in subsection 123(1) and the description of P in paragraph (*b*) of the definition "basic tax content" in subsection 123(1) that apply to selected listed financial institutions are amended. The amendment adds a reference to 5 per cent in respect of any amount of tax that the selected listed financial institution reports for the purposes of subsection 225.2(2) in reporting periods that end on or after January 1, 2008. The amendments to the definition "basic tax content" are consequential to the reduction of the GST rate and the federal component of the HST in participating provinces, from 6 per cent to 5 per cent.

These amendments come into force on January 1, 2008.

Clause 184

Imposition of goods and services tax

ETA
165(1)

Subsection 165(1) of the Act is the basic charging provision that imposes GST, or the federal component of the HST in participating provinces, on the recipient of a taxable supply made in Canada.

Subclause 184(1)

Imposition of goods and services tax

ETA
165(1)

Existing subsection 165(1) of the Act imposes the GST, or the federal component of the HST in participating provinces, on recipients of taxable supplies made in Canada at the rate of 6 per cent on the value of the consideration for the supply.

This subsection is amended to reduce the rate at which tax is imposed under it from 6 per cent to 5 per cent.

Subclause (2) provides the rules for determining whether, and the extent to which, tax imposed under subsection 165(1) applies at the rate of 5 per cent in respect of a particular taxable supply.

Paragraph 184(2)(*a*)

Supplies made on or after January 1, 2008

ETA
165(1)

Tax imposed under subsection 165(1) of the Act applies at the rate of 5 per cent for taxable supplies that are made on or after January 1, 2008. This rule does not apply to a supply by way of sale of real property that is deemed to be made under section 191 of the Act. Specific transitional rules, which are outlined below, apply to determine the application of amended subsection 165(1) to these deemed supplies and to supplies made before January 1, 2008 in certain circumstances. It is important to consider that in the case of deemed supplies the specific transitional rules in respect of the first reduction, from 7 per cent to 6 per cent on July 1, 2006, in the rate at which tax is calculated under subsection 165(1) may still apply and should be reviewed when determining the rate of tax that may apply to a particular deemed supply. Reference should also be made to the provisions of the Act, such as section 133, that apply in determining when a supply is made, to establish whether a supply is made on or after January 1, 2008, and thus is subject to this transitional rule.

Paragraph 184(2)(*b*)

Supplies made before January 1, 2008

ETA
165(1)

This transitional rule provides for the application of the 5 per cent rate of tax imposed under subsection 165(1) of the Act to supplies that are made before January 1, 2008, but only in respect of that portion of the tax that either becomes payable on or after January 1, 2008, and is not paid before that day, or is paid, without having become payable, on or after that day. This rule does not apply in respect of a supply by way of sale of real property. It is important to consider that in the case of supplies made before January 1, 2008, the specific transitional rules in respect of the first reduction, from 7 per cent to 6 per cent on July 1, 2006, in the rate at which tax is calculated under subsection 165(1) may still apply and should be reviewed when determining the rate of tax that may apply to a particular supply. Reference should be made to the provisions of the Act, such as section 133, that apply in determining when a supply is made, to establish whether a supply is made before January 1, 2008, and thus is subject to this transitional rule.

Paragraph 184(2)*(c)*

Sales of real property

ETA
165(1)

With respect to taxable supplies by way of sale of real property, the transitional rule does not depend upon the time at which tax becomes payable or is paid.

This transitional rule provides for the application of the 5 per cent rate of tax imposed under subsection 165(1) of the Act to any supply by way of sale of real property made before January 1, 2008, if ownership and possession of the property are both transferred on or after January 1, 2008, other than any of the following:

- a sale of real property that is deemed to have been made under Part IX of the Act, or
- a sale of a residential complex made under an agreement of purchase and sale, evidenced in writing, entered into on or before October 30, 2007.

It should be noted that other transitional rules may apply to impose tax at the rate of 5 per cent even if this rule does not. For example, a supply by way of sale of real property made on or after January 1, 2008, other than a supply deemed under section 191 of the Act to have been made, is subject to the transitional rule in paragraph 184(2)(*a*).

An example of the application of this transitional rule is a purchaser who signs an agreement to purchase a new home on November 15, 2007, with transfer of ownership and possession of the complex under the agreement taking place on January 2, 2008. Since transfer of ownership and possession take place on or after January 1, 2008, tax is imposed on the value of the consideration for the supply at the rate of 5 per cent. If instead, transfer of ownership had taken place on December 30, 2007, with transfer of possession still taking place on January 2, 2008, tax would be imposed on the value of the consideration for the supply at the rate of 6 per cent.

A purchaser of a residential complex who enters into an agreement of purchase and sale, evidenced in writing, of the complex on or before October 30, 2007, but after May 2, 2006, and does not acquire ownership and possession of the complex until on or after January 1, 2008, is required to pay tax imposed under subsection 165(1) at the rate of 6 per cent on the value of the consideration for the supply, but may be eligible to claim a transitional rebate in respect of the purchase under new section 256.74 of the Act. A purchaser of a residential complex who entered into an agreement of purchase and sale, evidenced in writing, of the complex on or before May 2, 2006, and to which ownership and possession of the complex is not transferred until on or after January 1, 2008, is required to pay tax imposed under subsection 165(1) at the rate of 7 per cent, but may be eligible to claim a transitional rebate in respect of the purchase under existing section 256.3 of the Act and an additional transitional rebate under new section 256.7 of the Act.

Paragraph 184(2)(*d*)

Rebates

ETA
165(1)

Section 181.1 of the Act deals with rebates offered directly to a customer acquiring the goods or services from the manufacturer or another vendor (e.g., manufacturers' rebates). Presently, where the issuer of the rebate is a registrant and notifies the customer that the rebate includes GST, the rebate is deemed to include tax equal to the appropriate tax fraction (e.g., 6/106, or 14/114 for participating provinces), which the issuer may claim as an input tax credit (ITC). Conversely, certain registrant customers are deemed to have made a taxable supply equal to the amount of the rebate and to have collected tax on that amount to the extent that the tax was claimed as an ITC. The tax fractions used in paragraphs 181.1(*a*) and (*b*) of the French version of the Act and 181.1(*e*) and (*f*) of the English version are based on the rate set out in subsection 165(1) of the Act. This rule ensures that a new tax fraction (e.g., 5/105, or 13/113 for participating provinces) applies for the purposes of determining, under subsection 181.1, tax or an input tax credit in respect of a supply of property or a service in respect of which tax becomes payable on or after January 1, 2008.

Paragraph 184(2)(*e*) and subclause 184(3)

Performance bonds

ETA
165(1)

Subsection 184.1(2) of the Act applies when a surety provides taxable supplies of construction services relating to the construction of real property situated in Canada if the construction services are carried on in full or partial satisfaction of the surety's obligation under a performance bond. A performance bond is a three-party agreement between a surety who issues a bond, an obligee who enters into a contract with a contractor, and a contractor who carries on construction. The surety, under the bond, agrees to remedy the contractor's default under the contract with the obligee. In some cases, the surety may step into the shoes of the defaulting

contractor and carry on the construction. If the surety is at any time entitled to receive contract payments (within the meaning of paragraph 184.1(2)(*a*)) from the obligee by reason of the surety's agreeing to carry on the construction, the surety is deemed to be engaged in that construction. Presently, the input tax credits a surety may claim with respect to direct inputs (within the meaning of paragraph 184.1(2)(*c*)) that are consumed, used, or supplied exclusively and directly in the course of carrying on the particular construction are capped at 6 per cent or 14 per cent of the total of all contract payments.

This transitional rule ensures that the rate of 5 per cent applies to the references to subsection 165(1) in subsection 184.1(2). The result is that where all of the contract payments to a surety in respect of a particular construction of real property become due, or are paid without having become due, on or after January 1, 2008, the surety may calculate input tax credits capped at 13 per cent of the total of those contract payments in respect of its supply of construction services if the supply is made in a participating province or, in any other case, 5 per cent of the total of those contract payments. Subclause 184(3) provides a transitional rule to also ensure the appropriate result where a surety receives contract payments, or contract payments become due, before and after January 1, 2008, in respect of a particular construction of real property. As a result, contract payments (within the meaning of paragraph 184.1(2)(*a*)) that become due or are paid to the surety without becoming due before July 1, 2006 are subject to a rate of 7 per cent or 15 per cent in participating provinces. Contract payments that become due on or after July 1, 2006, but before January 1, 2008, without having been paid before July 1, 2006, or are paid without having become due, to the surety on or after that day but before January 1, 2008, are subject to a rate of 6 per cent or 14 per cent in participating provinces. Contract payments that become due on or after January 1, 2008, without having been paid before that day, or are paid, without having become due, to the surety on or after that day are subject to a rate of 5 per cent or 13 per cent in participating provinces.

Paragraph 184(2)(*f*)

Self-supply of single unit residential complex or residential condominium unit

ETA
165(1)

Where subsection 191(1) of the Act applies, builders of newly constructed or substantially renovated single unit residential complexes (for example, detached and semi-detached houses) and residential condominium units must self-assess tax calculated on the fair market value of the residential complex or condominium unit. To trigger this self-assessment, subsection 191(1) treats the builder as having made and received a taxable supply of the complex or unit at a time specified in the subsection when certain conditions in respect of the complex or unit are first met and to have collected and paid tax at that time calculated on the fair market value of the complex or unit.

If the specified time at which the supply is deemed to have been made and received under subsection 191(1) is on or after January 1, 2008, tax imposed under subsection 165(1) of the Act applies at the rate of 5 per cent on the fair market value of the complex or unit. For example, a person who substantially completes construction of a detached home for rental purposes and first gives possession of the home to a tenant on January 1, 2008, is deemed to have paid and collected tax imposed under subsection 165(1) at the rate of 5 per cent on the fair market value of the home on that date. If possession of the complex were instead given on December 30, 2007, tax would be imposed under subsection 165(1) at the rate of 6 per cent (unless an exception similar to the one described below applied when the rate at which tax is calculated under subsection 165(1) was reduced from 7 per cent to 6 per cent).

An exception to this rule applies when a person purchases a house and leases the land on which it is situated from the builder of the house under an agreement entered into on or before October 30, 2007 and acquires possession of the house under the agreement on or after January 1, 2008. If this exception to the transitional rule applies, tax on the deemed supply under subsection 191(1) is imposed under subsection 165(1) at the rate

of 6 per cent. The purchaser of the building, or part of the building, in which the complex or unit is situated may be eligible to claim a rebate in respect of the purchase under new section 256.75 of the Act.

If the agreement was entered into on or before May 2, 2006 and the possession of the complex under the agreement is transferred on or after January 1, 2008, tax on the deemed supply under subsection 191(1) would be imposed under subsection 165(1) at the rate of 7 per cent since it would also constitute an exception to the application of a similar transitional rule introduced when the rate at which tax is calculated under subsection 165(1) was reduced from 7 per cent to 6 per cent. In these cases, purchasers may be eligible to claim a rebate in respect of the purchase under existing section 256.4 of the Act and an additional transitional rebate under new section 256.71 of the Act.

Paragraph 184(2)(*g*)

Self-supply of residential condominium unit

ETA
165(1)

Subsection 191(2) of the Act applies when the builder of a substantially completed residential condominium unit has given possession of the unit, before registration of the condominium complex in which it is situated, to a purchaser under an agreement of purchase and sale, the purchaser has occupied or rented out the unit and the agreement is terminated (otherwise than by performance of the agreement) without entering into a new agreement. Under these circumstances, subsection 191(2) treats the builder of the unit as having made and received a taxable supply of the unit at the time the agreement is terminated and as having collected and paid tax at that time calculated on the fair market value of the unit.

Under this transitional rule, if the agreement is terminated on or after January 1, 2008, then tax imposed under subsection 165(1) of the Act applies at the rate of 5 per cent, unless possession of the unit is transferred to the purchaser before that day. Where possession of the unit was transferred to the purchaser before January 1, 2008, but after July 1, 2006, the tax imposed under subsection 165(1) would apply at the rate of 6 per cent.

Finally, where possession of the unit was transferred to the purchaser before July 1, 2006, the tax imposed under subsection 165(1) would apply at the rate of 7 per cent since it would also constitute an exception to the application of a previous similar transitional rule introduced when the rate at which tax is calculated under subsection 165(1) was reduced from 7 per cent to 6 per cent.

Paragraph 184(2)(*h*)

Self-supply of multiple unit residential complex

ETA
165(1)

Where subsection 191(3) of the Act applies, builders of newly constructed or substantially renovated multiple unit residential complexes, such as apartment buildings, are treated as having made and received a taxable supply of the complex at a time specified in the subsection. Further, the builder is deemed to have collected and paid tax at that time calculated on the fair market value of the complex.

If the specified time at which the supply is deemed to have been made and received under subsection 191(3) is on or after January 1, 2008, then tax imposed under subsection 165(1) of the Act applies at the rate of 5 per cent on the fair market value of the complex. For example, a builder who completes construction of an apartment building and triggers a deemed supply on January 1, 2008, on first giving possession of an apartment in the building to a tenant would be deemed to have paid and collected tax imposed at the rate of 5 per cent on the fair market value of the building on that day. If first possession of an apartment in the building had instead been given on December 30, 2007, tax would have been imposed under subsection 165(1) at the rate of 6 per cent.

An exception to the application of this transitional rule applies if the triggering event causing a deemed supply on or after January 1, 2008, is the builder giving possession of a residential unit in the complex to a person under an agreement for the supply by way of sale of the building or part of the building forming part of the complex and for the supply by way of lease, or assignment of a lease, of the land forming part of the complex. The exception applies in this case, if the agreement was entered into on or before October 30, 2007, or another similar agreement entered into with another person was either entered into on or before May 2, 2006, and was not terminated before July 1, 2006, or entered into on or before October 30, 2007, and was not terminated before January 1, 2008. If this exception to the transitional rule applies, tax on the deemed supply under subsection 191(3) is imposed under subsection 165(1) at the rate of 7 per cent or 6 per cent depending on the circumstances. Where no agreement was entered into on or before May 2, 2006, tax would be imposed at the rate of 6 per cent in this exception.

In cases where the 6 per cent rate applies, a purchaser of the building or part of the building that forms part of a multiple unit residential complex to which the exception to the transitional rule applies may, however, be eligible to claim a rebate in respect of the purchase under new section 256.76 of the Act and the builder who is required to self-assess under subsection 191(3) may be eligible to claim a rebate under new section 256.77 of the Act.

Where at least one agreement was entered into on or before May 2, 2006, and was not terminated before July 1, 2006, the tax imposed under subsection 165(1) would apply at the rate of 7 per cent since it would also constitute an exception to the application of a previous transitional rule introduced when the rate at which tax is calculated under subsection 165(1) was reduced from 7 per cent to 6 per cent. In this case, in addition to the transitional rebates that a purchaser and the builder may be eligible to claim under existing sections 256.5 and 256.6 of the Act, a purchaser and the builder may respectively be eligible to claim a transitional rebate under new sections 256.72 and 256.73 of the Act.

Paragraph 184(2)(*i*)

Self-supply of addition to multiple unit residential complex

ETA
165(1)

When subsection 191(4) of the Act applies, a builder of a newly constructed addition to an existing multiple unit residential complex, such as an additional floor added to an apartment building, is treated as having made and received a taxable supply of the addition at a time specified in the subsection. Further, the builder is deemed have collected and paid tax at that time calculated on the fair market value of the addition.

If the specified time at which the supply is deemed to have been made and received under subsection 191(4) is on or after January 1, 2008, then tax is imposed under subsection 165(1) of the Act at the rate of 5 per cent on the fair market value of the addition. For example, a builder who substantially completes construction of an addition and triggers a deemed supply on January 1, 2008, on first giving possession of an apartment in the addition to a tenant, would be deemed to have paid and collected tax imposed under subsection 165(1) at the rate of 5 per cent on the fair market value of the addition on that date. If first possession of an apartment in the addition had instead been given on December 30, 2007, tax would have been imposed under subsection 165(1) at the rate of 6 per cent.

An exception to the application of this transitional rule applies if the triggering event causing a deemed supply on or after January 1, 2008, is the builder giving possession of a residential unit in the addition to a person under an agreement for the supply by way of sale of the building or part of the building forming part of the complex and for the supply by way of lease, or assignment of a lease, of the land forming part of the complex, and either that agreement was entered into on or before October 30, 2007, or another similar agreement entered into with another person was either entered into on or before May 2, 2006, and was not terminated before July 1, 2006, or entered into on or before October 30, 2007, and was not terminated before January 1, 2008.

If this exception to the transitional rule applies, tax on the deemed supply under subsection 191(4) is imposed at the rate of 7 or 6 per cent depending on the circumstances. Where no agreement was entered into on or before May 2, 2006, tax would be imposed at the rate of 6 per cent.

Where the 6 per cent rate applies, the purchaser of the building portion of a residential unit in an addition to a multiple unit residential complex to which the exception to the transitional rule applies may, however, be eligible to claim a rebate in respect of the purchase under new section 256.76 of the Act and the builder who is required to self-assess under subsection 191(4) may be eligible to claim a rebate under new section 256.77 of the Act.

Where at least one agreement was entered into on or before May 2, 2006, and was not terminated before July 1, 2006, the tax imposed under subsection 165(1) would apply at the rate of 7 per cent since it would also constitute an exception to the application of a similar transitional rule introduced when the rate at which tax is calculated under subsection 165(1) was reduced from 7 per cent to 6 per cent. In this case, in addition to the transitional rebates that the purchaser and the builder may be eligible to claim under existing sections 256.5 and 256.6 of the Act, the purchaser and the builder may respectively be eligible to claim a transitional rebate under new sections 256.72 and 256.73 of the Act.

Paragraphs 184(2)(*j*) and (*k*)

Selected listed financial institutions

ETA
165(1)

Section 225.2 of the Act provides for adjustments to net tax that are required to be made by selected listed financial institutions in determining net tax for a reporting period. One of these adjustments requires the calculation of amounts of tax in respect of supplies received by the financial institution from another person with whom the financial institution has made an election under section 150 of the Act, which election allows those supplies to be treated as exempt. The selected listed financial institution and the other person can elect under subsection 225.2(4) for the financial institution to calculate tax in respect of these supplies using a method, provided for under paragraph (*c*) of element A in subsection 225.2(2), based upon a calculation of tax on certain costs to the other person of making the exempt supplies.

Under the transitional rule in paragraph 184(2)(*j*), selected listed financial institutions calculating tax on costs under paragraph (*c*) of the description of A in subsection 225.2(2) for reporting periods that end on or after January 1, 2008, will use the rate of 5 per cent for calculating tax under subsection 165(1) of the Act regardless of when the costs of the other person were actually incurred.

As well, in determining the overall adjustment to net tax required under section 225.2, reference is made to the rate set out in subsection 165(1). Paragraph 184(2)(*k*) ensures that in calculating this adjustment for reporting periods that end on or after January 1, 2008, the reference to this rate is a reference to 5 per cent.

Paragraph 184(2)(*l*)

Employee and partner rebates

ETA
165(1)

Section 253 of the Act provides for the payment of rebates to employees and partners in respect of tax paid by them on certain property or services acquired or imported on their personal account and for which they can deduct an amount for income tax purposes for a calendar year. The formula in subsection 253(1) currently applies the factor 6/106, 8/108 or 14/114 to determine a rebate in respect of tax paid on property or services acquired or imported by an employee or partner, depending on whether the tax in question paid by the partner or employee was calculated at the rate of 6 per cent, 8 per cent or 14 per cent, respectively. Under subsection 253(2), the rebate payable under subsection 253(1) to an individual who is a member of a

partnership may not exceed the amount that would be an input tax credit of the partnership if the expenses had been incurred and the taxes had been paid by the partnership.

The amendment ensures that for the purposes of the description of A in subsection 253(1) and subparagraphs 253(2)(*a*)(i) and (*c*)(ii) in determining the amount of a rebate payable under subsection 253(1) for a calendar year after 2007, the references to the rate in subsection 165(1) of the Act is a reference to 5 per cent.

Paragraphs 184(2)(*m*) and (*n*)

Streamlined Accounting (GST/HST) Regulations

ETA
165(1)

The *Streamlined Accounting (GST/HST) Regulations* (the "Regulations") provide small businesses and public service bodies optional simplified methods of calculating their GST/HST remittances. One such method is the Streamlined Input Tax Credit Method that is available to businesses, charities, qualifying non-profit organizations and selected public service bodies that have filed an election, make less than $500,000 in annual taxable supplies (other than certain real property supplies) and make less than $2 million in annual taxable purchases (other than zero-rated purchases). Generally, the method permits registrants to calculate their input tax credits by reference to the total amount payable on an invoice. This relieves registrants of the need to separately identify the amount of GST or HST payable on each invoice, thus simplifying the bookkeeping requirements for small businesses.

Presently, subsection 21.3(2) of the Regulations generally allows a registrant to determine an input tax credit by multiplying the factor 6/106 (or 14/114 in the case of an input taxed at the HST rate) by the tax and duty-included cost of the input. The factor is therefore applied to an amount that includes not only consideration for the supplies, but also GST or HST, duties payable on importation, applicable provincial taxes, gratuities, interest and penalties for late payment.

The amendment ensures that a factor of 5/105 applies for the GST and 13/113 applies for the HST to inputs in this calculation. The transitional rule applies for the purpose of determining tax that became payable or was paid, without having become payable, by a registrant during reporting periods ending after 2007. A special transitional rule applies to reporting periods that include January 1, 2008. The rule ensures that the factors 6/106 and 14/114 apply to the consideration, tax, duties, gratuities, interest and penalties that become due, or are paid without having become due, during that period but before January 1, 2008. The factors of 5/105 and 13/113 apply to other consideration, tax, duties, gratuities, interest and penalties that become due, or are paid without having become due, during that reporting period.

Subsection 21.3(4) of the Regulations excludes the portion of an input tax credit that a registrant claims under subsection 21.3(2) in respect of the acquisition or importation of a passenger vehicle to which paragraph 13(7)(*g*) or (*h*) of the *Income Tax Act* applies. The effect is that a factor of 6/106 or 14/114 is applied to the amount deemed under paragraph 13(7)(*g*) or (*h*) to be the capital cost of the vehicle. That amount is the maximum allowable input tax credit, while the excess is excluded.

The amendment ensures that a factor of 5/105 or 13/113 applies to the determination of an input tax credit in respect of a passenger vehicle for which tax on the acquisition or importation first became payable, or was first paid without having become payable, after 2007.

Paragraph 184(2)(*o*)

Determining and calculating other amounts

ETA
165(1)

This transitional rule applies only if none of the other transitional rules for amended subsection 165(1) of the Act in paragraphs 184(2)(*a*) to (*n*) apply. An example of its application is the case of a registrant who acquires capital property in respect of which an election under section 167 of the Act applies. As a result of the election, no tax is actually payable in respect of the consideration for the supply of the property; however, in calculating the basic tax content of the property (within the meaning assigned by subsection 123(1) of the Act) the registrant is required to determine an amount equal to the tax that would have been payable in respect of the supply, but for the operation of section 167. If the tax that would have been payable under subsection 165(1) in respect of the supply would have been payable on or after January 1, 2008, then this transitional rule provides that the rate of 5 per cent applies in making that determination.

Clause 185

Employee and shareholder benefits

ETA
173(1)

Section 173 of the Act sets out the rules for determining the amount of tax to be remitted on a supply by a registrant to an employee or shareholder of the registrant when that supply gives rise to a taxable benefit for income tax purposes for a taxation year of an individual. In particular, the formula in clause 173(1)(*d*)(vi)(B) provides the manner for calculating tax to be remitted on a taxable employee or shareholder benefit, other than an automobile operating expense benefit to which a prescribed percentage applies.

Currently, clause 173(1)(*d*)(vi)(B) provides that where the recipient is a shareholder who is resident in a participating province at the end of the taxation year or where the recipient is an employee and the last establishment of the employer at which the employee ordinarily worked or to which the employee ordinarily reported in the year was located in a participating province, the tax remittance is to be calculated by multiplying the total consideration for the benefit by the factor 13/113. In any other case, the total consideration is multiplied by the factor 5/105.

Clause 173(1)(*d*)(vi)(B) is amended to adjust the base percentage to 4 per cent for determining the factors that are used for calculating the tax on a taxable employee or shareholder benefit. This amendment is consequential to the amendment to subsection 165(1) of the Act that reduces the rate of tax imposed under that subsection from 6 per cent to 5 per cent. As a result, the new factors will be 4/104 and 12/112 for the GST and HST respectively.

The amendment applies to the 2008 and subsequent taxation years of an individual.

Clause 186

Imposition of goods and services tax on imported goods

ETA
212

Existing section 212 of the Act imposes GST at the rate of 6 per cent on most goods imported into Canada by a person who is liable under the *Customs Act* to pay duty on the goods, or would be so liable if the goods were subject to duty.

Section 212 is amended to implement the rate reduction of the GST and the federal component of the HST from 6 per cent to 5 per cent.

The amendment to section 212 applies to goods imported into Canada, or released (as defined in the *Customs Act*), on or after January 1, 2008.

Clause 187

Imposition of goods and services tax on imported taxable supplies

ETA
218

Section 218 of the Act imposes a liability on every recipient of an imported taxable supply (within the meaning of section 217 of the Act) to pay tax at the rate of 6 per cent calculated on the value of the consideration for the supply. Imported taxable supplies include supplies of intangible personal property and services that are supplied outside Canada and certain supplies of tangible personal property by unregistered non-resident persons where the supply of the property is deemed to be made outside Canada but the property is delivered or possession of it is transferred in Canada without tax under Division II or III applying to it.

Section 218 is amended to implement the rate reduction of the GST and the federal component of the HST from 6 per cent to 5 per cent.

The amendment applies to any imported taxable supply made on or after January 1, 2008. The amendment also applies for the purposes of calculating tax in respect of any imported taxable supply made before January 1, 2008, but only in respect of consideration that becomes due on or after that day without having been paid before that day or that is paid, without having become due, on or after January 1, 2008. Finally, the amendment applies in situations not covered above for the purposes of determining or calculating tax that is not payable but would have been payable on or after January 1, 2008, in the absence of certain circumstances described in the Act, such as the fact that a person acquired property for consumption, use or supply exclusively in the course of commercial activities of the person.

Clause 188

New housing rebate

ETA
254(2)(*h*) and (*i*)

Section 254 of the Act provides for a partial rebate of the tax paid by an individual acquiring from a builder a single-unit residential complex or a residential condominium unit that has been newly constructed or substantially renovated for use as a primary place of residence of the individual, a related individual or a former spouse of the individual.

Existing paragraphs 254(2)(*h*) and (*i*) include a reference to $7,560, which is the current maximum rebate available and is equivalent to 36 per cent of the total tax paid under subsection 165(1) of the Act, currently calculated at 6 per cent, on a house priced at $350,000. As a result of the amendment to subsection 165(1), which reduces the rate at which tax is calculated from 6 per cent to 5 per cent, these paragraphs are amended to reduce the maximum rebate available to $6,300, which is equivalent to 36 per cent of the tax paid at the rate of 5 per cent on a house priced at $350,000.

The amendments to paragraphs 254(2)(*h*) and (*i*) apply to rebates in respect of residential complexes, the ownership of which is transferred on or after January 1, 2008, unless the tax under subsection 165(1) in respect of the supply of the complex applied at the rate of 7 per cent or 6 per cent.

Clause 189

New housing rebate for building only

ETA
254.1(2)(*c*), (*h*), (*i*) and (2.1)(*a*)

Section 254.1 of the Act provides for a rebate to an individual who purchases a building that forms part of a single unit residential complex or a residential condominium unit located on leased land. Subsection 254.1(2) provides for a partial rebate of an amount equivalent to the tax under subsection 165(1) of the Act embedded in the price of the building. Subsection 254.1(2.1) provides for a partial rebate of the provincial component of the HST embedded in the price of the building where the complex or unit is situated in Nova Scotia and is acquired by a qualifying purchaser who also qualifies for the rebate under subsection (2).

Existing paragraphs 254.1(2)(*c*), (*h*) and (*i*) have references to amounts that parallel the ones found in section 254 of the Act, which provides for a rebate where a residential complex, including the land that forms part of the complex, is purchased from a builder. Existing paragraph 254.1(2.1)(*a*) also refers to the value of the complex at or above which a purchaser ceases to qualify for the rebate under subsection (2).

As a result of the amendment to subsection 165(1), which reduces the rate at which tax is calculated from 6 per cent to 5 per cent, paragraphs 254.1(2)(*h*) and (*i*) are amended to reduce the maximum rebate available from $7,560 to $6,300, which corresponds to the maximum rebate available under amended subsection 254(2). Paragraphs 254.1(2)(*c*), (*h*) and (*i*), as well as paragraph 254.1(2.1)(*a*), are also amended to reduce amounts referred to in those paragraphs from $371,000, $477,000 and $106,000 to $367,500, $472,500 and $105,000 respectively to correspond to similar tax-embedded amounts consequential to the amendment to subsection 165(1). Finally, amendments are made to the reference in paragraphs 254.1(2)(*h*) and (*i*) to 2.04 per cent, which corresponds to the rebate, expressed as a percentage, available under subsection 254(2) if that rebate were to be expressed as a rebate applicable on the 6 per cent GST-included price of a residential complex. These paragraphs are amended to refer to 1.71 per cent instead of 2.04 per cent to reflect the reduction in the rate at which tax is calculated under amended subsection 165(1).

These amendments apply in respect of a residential complex in which a residential unit is situated if the possession of the unit is transferred on or after January 1, 2008, unless the tax under subsection 165(1) in respect of the deemed supply of the complex referred to in paragraph 254.1(2)(*d*) applied at the rate of 7 per cent or 6 per cent.

Clause 190

Cooperative housing rebate

ETA
255(2)(*d*), (*g*), (*h*) and (2.1)(*c*)

Section 255 of the Act provides for a rebate to an individual in respect of the purchase of a share in a co-operative housing corporation for the purpose of using a new residential unit of the corporation as a primary place of residence of the individual, a related individual or a former spouse of the individual. Subsection 255(2) provides for a partial rebate of an amount equivalent to the tax under subsection 165(1) of the Act embedded in the cost of the share. Subsection 255(2.1) provides for a partial rebate of the provincial component of the HST embedded in the cost of the share where the unit is situated in Nova Scotia and the share is acquired by a qualifying purchaser who also qualifies for the rebate under subsection (2).

Existing paragraphs 255(2)(*d*), (*g*) and (*h*) have references to amounts that parallel the ones found in section 254 of the Act, which provides for a rebate where a residential complex, including the land that forms part of the complex, is purchased from a builder. Existing paragraph 255(2.1)(*c*) also refers to the value at which a purchaser ceases to qualify for the rebate under subsection (2).

As a result of the amendment to subsection 165(1), which reduces the rate at which tax is calculated from 6 per cent to 5 per cent, paragraphs 255(2)(*g*) and (*h*) are amended to reduce the maximum rebate available from $7,560 to $6,300, which corresponds to the maximum rebate available under amended subsection 254(2). Paragraphs 255(2)(*d*), (*g*) and (*h*), as well as paragraph 255(2.1)(*c*), are also amended to reduce the amounts referred to in those paragraphs from $371,000, $477,000 and $106,000 to $367,500, $472,500 and $105,000 respectively to correspond to similar tax-embedded amounts consequential to the amendment to subsection 165(1). Finally, amendments are made to the reference in paragraphs 255(2)(*g*) and (*h*) to 2.04 per cent, which corresponds to the rebate, expressed as a percentage, under subsection 254(2) if that rebate were to be expressed as a rebate applicable on the 6 per cent GST-included price of a residential complex. These paragraphs are amended to refer to 1.71 per cent instead of 2.04 per cent to reflect the reduction in the rate at which tax is calculated under amended subsection 165(1).

These amendments apply in respect of a rebate application filed on or after January 1, 2008, unless the cooperative housing corporation paid tax under subsection 165(1) in respect of the supply to the corporation of the complex in which the residential unit is situated calculated at the rate of 7 per cent or 6 per cent.

Clause 191

Rebate for owner-built homes

ETA
256(2)

Section 256 of the Act provides a partial rebate of the GST paid by an individual who builds or substantially renovates his or her own primary place of residence or hires another person to do so.

Existing subparagraph (i) of the description of A in subsection 256(2) includes a reference to $7,560, which parallels the current maximum rebate available under subsection 254(2) of the Act in the case of a new home purchased from a builder. Currently the rebate under section 256 is applicable where all or substantially all of the "total tax paid by the particular individual" (as defined in paragraph 256(2)(*c*)) before an application for the rebate is filed with the Minister of National Revenue (the "rebatable tax") was paid at the rate of 6 per cent. Existing subparagraph (i) is renumbered as subparagraph (ii), so that where all or substantially all of the rebatable tax was paid at the rate of 6 per cent, the current maximum rebate of $7,560 will continue to apply. New subparagraph (i) includes a reference to $6,300, which parallels the amended maximum rebate available under subsection 254(2), and will apply where all or substantially all of the rebatable tax was paid at the rate of 5 per cent. As a result, where all or substantially all of the rebatable tax was paid at the rate of 5 per cent, a maximum rebate of $6,300 will apply. New subparagraph (iii) of the description of A in subsection 256(2) contains a formula to calculate the appropriate maximum rebate where all or substantially all of the rebatable tax was neither paid at the rate of 5 per cent nor 6 per cent.

Depending on the percentage of the rebatable tax that was paid at the rate of 7 per cent or 6 per cent, the maximum rebate under the formula will vary between $6,300 and $8,750. Where this formula applies, the result is necessarily higher than $6,300 since it only applies if subparagraphs (i) and (ii) do not apply.

This amendment applies for the purpose of determining a rebate in respect of a residential complex for which an application is filed with the Minister on or after January 1, 2008.

Clause 192

New residential rental property rebate

ETA
256.2(3) to (5)

Section 256.2 of the Act provides for a 36 per cent rebate of the tax imposed under subsection 165(1) of the Act in respect of newly-constructed or substantially-renovated residential rental accommodation, including multiple-unit residential complexes. Consistent with the rebate under subsection 254(2) of the Act, which

provides for a partial rebate of the tax paid by an individual purchasing from a builder a single-unit residential complex or a residential condominium unit, the maximum rebate available under subsections 256.2(3) to (5) in respect of a "qualifying residential unit" (as defined in subsection 256.2(1)) is $7,560.

As a result of the amendment to subsection 165(1), which reduces the rate at which tax is calculated from 6 per cent to 5 per cent, subsections 256.2(3) to (5) are amended to reduce the maximum rebate used in the formulas contained in these subsections from $7,560 to $6,300. This maximum corresponds to the maximum rebate available under amended subsection 254(2).

These amendments apply, in the case of purchaser-landlords, to residential complexes in respect of which ownership and possession under the agreement for the supply are transferred on or after January 1, 2008, unless the agreement was entered into on or before October 30, 2007. In the case of builder-landlords, these amendments generally apply to residential complexes in respect of which the tax is deemed to have been paid under section 191 of the Act on or after January 1, 2008. However, in the case of an exempt sale of a building or part of a building, forming part of a residential complex, to a person who leases the land on which the building is located, the amendment to subsection 165(1) that reduces the rate of tax to 5 per cent might not be applicable even if the tax is deemed to have been paid under section 191 on or after January 1, 2008 (see paragraphs 184(2)(*f*), (*h*) and (*i*)). If it is the case, the amendment to subsection 256.2(3) to (4) will also not apply.

Clause 193

Transitional rebate for builder

ETA
256.6

As a result of an amendment to subsection 165(1) of the Act in 2006 that reduced the rate at which tax is calculated under that subsection from 7 per cent to 6 per cent, section 256.6 was added to the Act to provide, in certain cases, for a transitional rebate to a builder that is required to pay tax under subsection 165(1) as a result of the application of the self-supply rules under subsection 191(3) or (4) of the Act. In addition to applying to cases where a traditional new multiple unit residential complex is first rented to tenants, subsection 191(3) also applies where a builder first makes an exempt supply by way of lease of land forming part of a new residential complex, other than a single unit residential complex (as defined in subsection 123(1) of the Act) or a residential condominium unit, or an exempt supply of such a lease by way of assignment, and an exempt supply by way of sale of the building or part of the building that forms part of the complex. Subsection 191(4) applies to similar situations involving an addition to an existing multiple unit residential complex. In addition to the transitional rebate to which a purchaser of a part of the building forming part of the complex or the addition to the complex might be entitled to claim under section 256.5 of the Act, the builder might, in these cases, be entitled to claim a rebate under section 256.6 of the Act.

Where all the conditions are met, the availability and calculation of a transitional rebate that a builder would be eligible to claim depends on the adjusted consideration payable by purchasers for parts of the building and the fair market value of the complex on which the builder was deemed to have paid and collected GST under subsection 191(3). In the case of an addition to a complex, it is intended that the availability and calculation of a transitional rebate depend on the adjusted consideration payable by purchasers for parts of the building that forms part of the addition and the fair market value of the addition on which the builder was deemed to have paid and collected GST under subsection 191(4). However, the existing description of C in subsection 256.6(1) does not currently include a reference to an addition to a residential complex. As a result, a strict reading of 256.6 could potentially create difficulties in arriving at the appropriate amount. For example, if the fair market value of the existing complex is less than the fair market value of the addition, the calculation could result in a reduced transitional rebate or no transitional rebate at all. To ensure the proper application of section 256.6 in the case of an addition to a multiple unit residential complex, the description of C in

subsection 256.6(1) is amended to include a reference to an addition in the case where a builder is required to remit tax under subsection 191(4).

This amendment is deemed to have come into force on July 1, 2006, the day section 256.6 came into force.

Clause 194

Transitional rebate – 2008 rate reduction

ETA
256.7 to 256.73

As a general rule, the amendment to subsection 165(1) of the Act, which reduces the rate at which tax is calculated from 6 per cent to 5 per cent, is applicable in the case of a supply of real property by way of sale if the transfer of ownership and possession under the agreement of purchase and sale occur on or after January 1, 2008. However, certain exceptions are provided in the application rules to that amendment (see subclause 184(2)) so that the tax under subsection 165(1) might not apply at the rate of 5 per cent in certain cases involving residential units. In addition, similar exceptions are provided in the application rules to a previous amendment that reduced the rate at which tax is calculated from 7 per cent to 6 per cent. As a result, tax under subsection 165(1) might apply at the rate of 7 per cent even in cases where ownership and/or possession of certain residential units are transferred on or after January 1, 2008. The latter will generally be the case where a transaction involving a residential unit situated in a residential complex is made pursuant to an agreement entered into on or before May 2, 2006.

The reason for these exceptions to the general application rules is that there are circumstances where a builder and a purchaser have entered into an agreement of purchase and sale for a new residential complex prior to being aware of when the rate under subsection 165(1) would be changed to 6 per cent and then 5 per cent and, therefore, the agreement might reflect a 7 per cent or 6 per cent tax rate under subsection 165(1). In some situations, the price agreed upon might also be an all inclusive price determined on the basis of a 7 per cent or 6 per cent tax rate under subsection 165(1) and, where applicable, of a GST New Housing Rebate credited by the builder, despite the fact that the closing date falls on or after January 1, 2008. In addition, there are also cases where, even though the supply is exempt from GST/HST, there is a strong link between the tax payable by the builder and the consideration paid by the purchaser. For example, a sale of a new home built on leased land could be exempt from GST/HST and the builder might be required to pay tax on the fair market value of the residential complex. However, the purchaser might be entitled to a GST New Housing Rebate under subsection 254.1(2) of the Act and the price agreed upon might reflect the fact that the rebate was credited by the builder.

In those cases, tax under subsection 165(1) will continue to apply at 7 per cent or 6 per cent, as the case may be, but the purchaser and, depending on the circumstances, the builder are allowed to claim a transitional rebate for the difference between tax under subsection 165(1) at 7 per cent and 6 per cent (including adjustments, where necessary, for the GST New Housing Rebate or other rebates allowed under the existing provisions) under existing sections 256.3 to 256.6 of the Act.

New sections 256.7 to 256.73 of the Act provide for transitional rebates that, together with the transitional rebates already available under existing sections 256.3 and 256.6, to generally place the parties involved in these transactions in the same situation as if the general application rules with respect to the amendments to subsection 165(1) were known at the time the agreement was entered into.

New section 256.7 provides for a transitional rebate in the case where, pursuant to an agreement of purchase and sale, evidenced in writing, entered into on or before May 2, 2006, a person acquires from another person a new or substantially renovated residential complex in respect of which ownership and possession under the agreement are transferred to the person on or after January 1, 2008. Since the complex must be acquired from another person, this new section does not apply where the self-supply rules under section 191 of the Act are applicable. Transitional rebates under new section 256.7 are in addition to the transitional rebates available under existing section 256.3. As is the case with the transitional rebates under section 256.3, the transitional rebates available under new section 256.7 are equivalent to 1 per cent of the consideration paid minus, where applicable, an adjustment to take into account the fact that other benefits, such as the amount of GST/HST New Housing Rebate available, remained unchanged. As a result of the application of existing section 256.3 and new section 256.7, the total amount of transitional rebates available in these cases is equivalent to 2 per cent of the consideration paid minus applicable adjustments.

New sections 256.71 to 256.73 generally provide for a transitional rebate where a person is the recipient, pursuant to an agreement entered into on or before May 2, 2006, of an exempt supply by way of lease of land forming part of a new residential complex, or an exempt supply of such a lease by way of assignment, and of an exempt supply by way of sale of the building or part of the building that forms part of the complex if possession of the complex is given to the person under the agreement on or after January 1, 2008.

In addition, sections 256.72 and 256.73 also address the situation where part of a building, forming part of a residential complex, is sold to a person who leases the land on which the building is located. In that case, the builder might be required under section 191 to pay tax before January 1, 2008, at the rate of 7 per cent under subsection 165(1), in respect of the entire residential complex even if ownership and possession of that part of the building were not transferred to the purchaser before January 1, 2008.

Transitional rebates under new sections 256.71 to 256.73 are in addition to the transitional rebates available under sections 256.4 to 256.6 of the Act. Also, the amount of a transitional rebate under new sections 256.71 to 256.73 should be equal to the amount also available under existing sections 256.4 to 256.6 as the formulas used to calculate the amount of a transitional rebate in both cases are essentially the same.

The Act does not provide for the possibility of assigning the transitional rebate under section 256.7 to 256.73. In addition, section 67 of the *Financial Administration Act* (the "FAA") provides that, except as provided in the FAA or any other Act of Parliament, a Crown debt is not assignable and no transaction purporting to be an assignment of a Crown debt is effective so as to confer on any person any rights or remedies in respect of that debt. It should be noted that, while the Act does not provide for the possibility of assigning new housing rebates under section 254 of the Act or 254.1, these sections include mechanisms to allow builders to pay or credit the amount of a new housing rebate to a purchaser. To the extent that an amount was paid or credited to a purchaser on account of a rebate to which the purchaser is entitled under sections 254 and 254.1, and provided that the builder transmits the application of the purchaser for the rebate to the Minister of National Revenue in accordance with these sections, section 234 of the Act allows the builder to deduct that amount in determining the builder's net tax. Section 256.7 (as well as sections 256.71 and 256.72) does not include such a mechanism. As a result, it would not be possible for a builder to pay or credit a transitional rebate to the purchaser and be allowed to deduct the amount of the rebate in determining the builder's net tax.

Consequently, a rebate application under section 256.7 in respect of a residential complex must be filed directly with the Minister by the purchaser within two years after the day that the ownership of the complex is transferred to the purchaser. In cases where a GST/HST New Housing Rebate is also available, the rebate application must be filed by the same person that applied for the GST/HST New Housing Rebate. It should be noted that, in the case of a GST/HST New Housing Rebate submitted to a builder and forwarded by the builder to the Minister, it is still the purchaser that applied for the GST/HST New Housing Rebate. The purchaser must still file the application for the transitional rebate directly with the Minister.

A rebate application under sections 256.71 and 256.72 in respect of an exempt supply by way of sale of the building or part of the building that forms part of the complex must be filed directly with the Minister of National Revenue by the purchaser within two years after the day possession of the unit forming part of the complex is transferred to the purchaser.

With respect to builders, a rebate application under sections 256.71 and 256.73 in respect of a residential complex or of an addition to it must be filed by the builder within two years after the end of the month in which tax under section 191 in respect of the complex or addition is deemed to have been paid by the builder.

Transitional rebate – 2008 rate reduction

ETA
256.74 to 256.77

As a general rule, the amendment to subsection 165(1) of the Act, which reduces the rate at which tax is calculated from 6 per cent to 5 per cent, is applicable in the case of a supply of real property by way of sale if transfer of ownership and possession under the agreement of purchase and sale occur on or after January 1, 2008. However, certain exceptions are provided in the application rules to that amendment (see subclause 184(2)) so that the tax under subsection 165(1) might continue to apply at the rate of 6 per cent even in cases where ownership and/or possession of residential units are transferred on or after January 1, 2008. This will generally be the case where a transaction involving a residential unit situated in a residential complex is made pursuant to an agreement entered into after May 2, 2006, and on or before October 30, 2007. In the case of a transaction involving a residential unit situated in a residential complex that is made pursuant to an agreement entered into on or before May 2, 2006, the tax under subsection 165(1) might continue to apply at the rate of 7 per cent and transitional rebates might be available under existing sections 256.3 to 256.6 of the Act and, in addition to a rebate available under these sections, under new sections 256.7 to 256.73 of the Act.

The reason for this exception to the general application rule is that there are circumstances where a builder and a purchaser have entered into an agreement of purchase and sale for a new residential complex prior to being aware of when the rate under subsection 165(1) would be changed from 6 per cent to 5 per cent and, therefore, the agreement might reflect a 6 per cent tax rate under subsection 165(1). In some situations, the price agreed upon might also be an all inclusive price determined on the basis of a 6 per cent tax rate under subsection 165(1) and, where applicable, of a GST New Housing Rebate credited by the builder, despite the fact that the closing date falls on or after January 1, 2008. In addition, there are also cases where, even though the supply is exempt from GST/HST, there is a strong link between the tax payable by the builder and the consideration paid by the purchaser. For example, a sale of a new home built on leased land could be exempt from GST/HST and the builder might be required to pay tax on the fair market value of the residential complex. However, the purchaser might be entitled to a GST New Housing Rebate under subsection 254.1(2) of the Act and the price agreed upon might reflect the fact that the rebate was credited by the builder. In those cases, tax under subsection 165(1) will continue to apply at 6 per cent but the purchaser and, depending on the circumstances, the builder will be allowed to claim a transitional rebate for the difference between tax under subsection 165(1) at 6 per cent and 5 per cent (including adjustments, where necessary, for the GST New Housing Rebate or other rebates allowed under the existing provisions).

New sections 256.74 to 256.77 of the Act provide for transitional rebates that are introduced to generally place the parties involved in these transactions in the same situation as if the general application rule with respect to the amendment to subsection 165(1) were known at the time the agreement was entered into. In addition, sections 256.76 and 256.77 also address the situation where part of a building, forming part of a residential complex, is sold to a person who leases the land on which the building is located. In those cases, the builder might be required under section 191 of the Act to pay tax before January 1, 2008, at the rate of 6 per cent under subsection 165(1), in respect of the entire residential complex even if ownership and possession of that part of the building were not transferred to the purchaser before January 1, 2008.

It should be noted that, even though the transitional rebates under new sections 256.74 to 256.77 include references to other rebate programs, the transitional rebates are also available in situations where purchasers do not qualify for the existing GST/HST New Housing Rebate or the existing GST New Residential Rental Property Rebate.

New section 256.74 provides for transitional rebates in the case where, pursuant to an agreement of purchase and sale, evidenced in writing, entered into after May 2, 2006, and on or before October 30, 2007, a person acquires from another person a new or substantially renovated residential complex in respect of which ownership and possession under the agreement are transferred to the person on or after January 1, 2008. Since the complex must be acquired from another person, this new section does not apply where the self-supply rules under section 191 of the Act are applicable.

The transitional rebate available under new section 256.74 is equivalent to 1 per cent of the consideration paid minus, where applicable, an adjustment to take into account the fact that other benefits, such as an amount of GST/HST New Housing Rebate available. For example, in the case of a purchaser of a new residential complex, priced at $200,000 (tax not included), that is to be used as the primary place of residence of the purchaser, the GST under subsection 165(1) will remain at 6 per cent even if ownership and possession under the agreement of purchase and sale, entered into after May 2, 2006, and before October 30, 2007, are transferred on or after January 1, 2008. However, the purchaser will remain entitled to claim a GST New Housing Rebate equivalent to 36 per cent of the tax calculated at 6 per cent. As a result, 36 per cent of the 1-per-cent reduction under subsection 165(1) is already refunded under the rebate available under subsection 254(2) of the Act.

New subsection 256.74(1) provides for a transitional rebate to purchasers, other than a cooperative housing corporation, that are not otherwise entitled to recover all or a portion of the tax paid under subsection 165(1). In these cases, the adjustment for rebates otherwise available is not necessary and the transitional rebate is equal to 1 per cent of the consideration paid. New subsection 256.74(2) provides for a transitional rebate to purchasers, other than a cooperative housing corporation, that qualify for the GST New Residential Rental Property Rebate. New subsection 256.74(3) provides for a transitional rebate to purchasers, other than a cooperative housing corporation, that qualify for the Public Service Body Rebate. New subsection 256.74(4) provides for a transitional rebate to purchasers that are cooperative housing corporations and addresses the situation where the corporation does not qualify for another rebate as well as situations where the corporation, or the purchaser of a share of the corporation, is entitled or can reasonably expect to be entitled to another rebate. Finally, subsection 256.74(5) provides for a transitional rebate to individuals that are entitled to claim a GST New Housing Rebate under subsection 254(2) of the Act. In this particular case, subsection 256.74(6) contains a rule similar to the one found in existing subsection 262(3) of the Act, which provides rules for applying the New Housing Rebate provisions under sections 254 to 256 when more than one individual is liable for consideration and tax in respect of the same residential complex.

The Act does not provide for the possibility of assigning the transitional rebate under section 256.74 to 256.77. In addition, section 67 of the *Financial Administration Act* (the "FAA") provides that, except as provided in the FAA or any other Act of Parliament, a Crown debt is not assignable and no transaction purporting to be an assignment of a Crown debt is effective so as to confer on any person any rights or remedies in respect of that debt. It should be noted that, while the Act does not provide for the possibility of assigning new housing rebates under section 254 of the Act or 254.1, these sections include mechanisms to allow builders to pay or credit the amount of a new housing rebate to a purchaser. To the extent that an amount was paid or credited to a purchaser on account of a rebate to which the purchaser is entitled under sections 254 and 254.1, and provided that the builder transmits the application of the purchaser for the rebate to the Minister of National Revenue in accordance with these sections, section 234 of the Act allows the builder to deduct that amount in determining the builder's net tax. Section 256.74 (as well as sections 256.75 and 256.76) does not include such a mechanism. As a result, it would not be possible for a builder to pay or credit a transitional rebate to the purchaser and be allowed to deduct the amount of the rebate in determining the builder's net tax.

Therefore, the rebate applications for the transitional rebate under new section 256.74 must be filed, in every cases, by the purchaser directly with the Minister of National Revenue. In cases where a GST/HST New Housing Rebate is also available, the rebate application must be filed by the same person that applied for the GST/HST New Housing Rebate. It should be noted that, in the case of a GST/HST New Housing Rebate submitted to a builder and forwarded by the builder to the Minister, it is still the purchaser that applied for the GST/HST New Housing Rebate. The purchaser must still file the application for the transitional rebate directly with the Minister of National Revenue. The transitional rebate application must be filed with the Minister of National Revenue within two years after the day that the ownership of the complex is transferred to the purchaser.

New sections 256.75 to 256.77 generally provide for a transitional rebate where a person is the recipient, pursuant to an agreement entered into after May 2, 2006, and on or before October 30, 2007, of an exempt supply by way of lease of land forming part of a new residential complex, or an exempt supply of such a lease by way of assignment, and of an exempt supply by way of sale of the building or part of the building that forms part of the complex.

New section 256.75 provides for a transitional rebate where the building or part of the building forms part of a single unit residential complex (as defined in subsection 123(1) of the Act) or of a residential condominium unit. In such a case, new section 256.75 provides for a transitional rebate to the purchaser and, depending on the adjusted consideration payable by the purchaser for the building or part of the building and the fair market value of the complex on which the builder was deemed to have paid and collected GST under section 191, a transitional rebate to the builder as well. For example, where the fair market value of the complex at the time the builder is required to pay GST under section 191 is $300,000 and the consideration for the building forming part of the complex is $275,000, which would include an amount that reflects the GST payable by the builder on the portion of the fair market value that relates to the building that the builder cannot otherwise recover, both the purchaser and the builder would be entitled to claim a transitional rebate. Similar to the transitional rebate under new section 256.74, the formulas in new section 256.75 contain an appropriate adjustment to take into account other benefits, such as the rebates available under subsections 254.1(2) and 256.2(4) of the Act.

New sections 256.76 and 256.77 provide for a transitional rebate where the building or part of the building forms part of a residential complex that is not a single unit residential complex (as defined in subsection 123(1)) or a residential condominium unit. In these cases, several purchasers could be involved and the builder is required to pay tax under subsection 165(1) in respect of the residential complex, as a result of the application of the self-supply rules under section 191, at a particular time that might not be the particular time at which a particular purchaser is given possession of a residential unit forming part of the new residential complex. As a result, a particular purchaser might be entitled to a transitional rebate under section 256.76 even if the builder was required to pay tax in respect of the residential complex before January 1, 2008, provided that possession of the residential unit forming part of the complex or of the addition is given to the particular purchaser, under the agreement for the supply by way of sale of the building or part of the building forming part of the complex and by way of lease of the land forming part of the complex, on or after January 1, 2008.

In addition, under the application rules to the amendment to subsection 165(1), which reduces the rate at which tax is calculated from 6 per cent to 5 per cent, the builder might be required to pay tax under subsection 165(1) at the rate of 6 per cent even if the self-supply rules under section 191 applies on or after January 1, 2008. It would be the case if any agreement that provides for an exempt supply by way of lease of land forming part of the new residential complex, or an exempt supply of such a lease by way of assignment, and an exempt supply by way of sale of the building or part of the building that forms part of the complex was entered into after May 2, 2006, and on or before October 30, 2007, and that agreement was not terminated before January 1, 2008. In such a case, in addition to a rebate under section 256.76 that the purchasers may be entitled to claim, the builder may also be entitled to claim a transitional rebate under section 256.77.

As for other transitional rebates, the transitional rebates under sections 256.76 and 256.77 also include an adjustment to take into account other benefits, such as the rebates available under subsections 254.1(2) and 256.2(4).

A rebate application under sections 256.75 and 256.76 in respect of an exempt supply by way of sale of the building or part of the building that forms part of the complex must be filed directly with the Minister of National Revenue by the purchaser within two years after the day possession of the unit forming part of the complex is transferred to the person.

With respect to builders, a rebate application under section 256.75 or 256.77 in respect of a residential complex or of an addition to it must be filed by the builder within two years after the end of the month in which tax under section 191 in respect of the complex or addition is deemed to have been paid by the builder.

Clause 195

Variation of agreement – 2008 rate reduction

ETA
274.11

New section 274.11 of the Act provides an anti-avoidance rule in the case where an agreement for a taxable supply of property or a service, entered into before January 1, 2008, between a supplier and a recipient not dealing at arm's length is subsequently varied, altered or terminated and re-entered into to benefit from the rate reduction. The provision applies if it may not reasonably be considered for both the supplier and the recipient that the variation, alteration or termination and the entering into of a new agreement has been undertaken or arranged for *bona fide* purposes other than to benefit in any manner from the reduction of the GST from 7 per cent or 6 per cent to 5 per cent. The provision operates to impose tax at the original rate of tax (i.e., 7 per cent or 6 per cent as the case may be) on any part of the value of the consideration for a supply, attributable to any part of the property or service, on which tax would, but for this new section, be calculated at 5 per cent. Section 274.11 applies whether one or more than one new agreements are entered into between the supplier and the recipient or with other persons if the supplier supplies and the recipient receives all or substantially all the same property or service.

New section 274.11 applies to any agreement varied, altered, terminated, or entered into on or after October 30, 2007.

Related Amendments as a Result of the GST/HST Rate Reduction

Air Travellers Security Charge Act

Clause 196

Amount of charge if service acquired in Canada

ATSCA
12(1)(*a*), (*b*) and (*d*)

Existing subsection 12(1) establishes the amount of the Air Travellers Security Charge (ATSC or the charge) that is payable on an air transportation service acquired in Canada. This includes air transportation services deemed under section 13 to have been acquired in Canada.

Paragraph 12(1)(*a*) establishes the amount of the charge at $4.67 per chargeable emplanement to a maximum of $9.34 per ticket for domestic air travel, where tax under subsection 165(1) of the *Excise Tax Act* (i.e., the GST or the federal component of the HST) is required to be paid. With the application of tax under subsection 165(1) of the *Excise Tax Act* at a rate of 6 per cent, the total cost of the ATSC is $4.95 per chargeable emplanement to a maximum of $9.90 per ticket for domestic air travel.

Paragraph 12(1)(*b*) establishes the amount of the charge at $4.95 per chargeable emplanement to a maximum of $9.90 per ticket for domestic air travel, where tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid. This ensures that all domestic air travellers contribute to the cost of air travel security on an equitable basis.

Paragraph 12(1)(*c*) establishes the amount of the charge at $7.94 per chargeable emplanement to a maximum of $15.89 per ticket for transborder air travel, where tax under subsection 165(1) of the *Excise Tax Act* is required to be paid. With the application of tax under subsection 165(1) of the *Excise Tax Act* at a rate of 6 per cent, the total cost of the ATSC is $8.42 per chargeable emplanement to a maximum of $16.84 per ticket for transborder air travel.

Paragraph 12(1)(*d*) establishes the amount of the charge at $8.42 per chargeable emplanement to a maximum of $16.84 per ticket for transborder air travel, where tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid. This ensures that all transborder air travellers contribute to the cost of air travel security on an equitable basis.

The proposed rate reduction for the GST and the federal component of the HST to 5 per cent has the effect of reducing the total cost of the ATSC when applied to the rates currently established by paragraphs 12(1)(*a*) and (*c*). In order to ensure equitable treatment of air travellers in those situations where tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid, ATSC rates established by paragraphs 12(1)(*b*) and (*d*) must be reduced.

Application of the GST or the federal component of the HST at a rate of 5 per cent to the current ATSC rates established in paragraph 12(1)(*a*) of $4.67 and $9.34 has the effect of reducing the total cost of the ATSC to $4.90 per chargeable emplanement to a maximum of $9.81 per ticket for domestic air travel. In order to maintain the maximum cost per ticket at a level equivalent to twice the amount for a single emplanement, the maximum ATSC rate set out in paragraph 12(1)(*a*) rate is reduced by one cent, to $9.33 from $9.34.

New paragraph 12(1)(*a*) establishes the amount of the charge at $4.67 per chargeable emplanement to a maximum of $9.33 per ticket for domestic air travel, where tax under subsection 165(1) of the *Excise Tax Act* is required to be paid. With the application of tax under subsection 165(1) of the *Excise Tax Act* at a rate of 5 per cent, the total cost of the ATSC is $4.90 per chargeable emplanement to a maximum of $9.80 per ticket for domestic air travel.

New paragraph 12(1)(*b*) establishes the amount of the charge at $4.90 per chargeable emplanement to a maximum of $9.80 per ticket for domestic air travel, where tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid. This ensures that all domestic air travellers contribute to the cost of air travel security on an equitable basis.

Application of the GST or the federal component of the HST at a rate of 5 per cent to the current ATSC rates established in paragraph 12(1)(*c*) of $7.94 and $15.89 has the effect of reducing the total cost of the ATSC to $8.34 per chargeable emplanement to a maximum of $16.68 per ticket for transborder air travel. As the maximum charge remains at a level equivalent to twice the amount for a single emplanement, no adjustment is required for ATSC rates in paragraph 12(1)(*c*).

New paragraph 12(1)(*d*) establishes the amount of the charge at $8.34 per chargeable emplanement to a maximum of $16.68 per ticket for transborder air travel, where tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid. This ensures that all transborder air travellers contribute to the cost of air travel security on an equitable basis.

Consistent with the effective date for the proposed GST/HST rate reduction, new paragraphs 12(1)(*a*), (*b*) and (*d*) apply to air travel purchased on or after January 1, 2008.

Amount of charge if service acquired outside Canada

ATSCA
12(2)(*b*)

Existing subsection 12(2) establishes the amount of the charge that is payable on an air transportation service acquired outside Canada.

Paragraph 12(2)(*a*) establishes the amount of the charge at $7.94 per chargeable emplanement to a maximum of $15.89 per ticket for transborder air travel, where tax under subsection 165(1) of the *Excise Tax Act* is required to be paid. With the application of the GST at a rate of 6 per cent, the total cost of the ATSC is $8.42 per chargeable emplanement to a maximum of $16.84 per ticket for transborder air travel.

Paragraph 12(2)(*b*) establishes the amount of the charge at $8.42 per chargeable emplanement to a maximum of $16.84 per ticket for transborder air travel, where tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid. This ensures that all transborder air travellers contribute to the cost of air travel security on an equitable basis.

The proposed rate reduction for the GST and the federal component of the HST to 5 per cent has the effect of reducing the total cost of the ATSC when applied to the rates currently established under paragraph 12(2)(*a*). In order to ensure equitable treatment of air travellers in those situations where tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid, ATSC rates under 12(2)(*b*) must be reduced.

Application of the GST or the federal component of the HST at a rate of 5 per cent to the current ATSC rates established in paragraph 12(2)(*a*) of $7.94 and $15.89 has the effect of reducing the total cost of the ATSC to $8.34 per chargeable emplanement to a maximum of $16.68 per ticket for transborder air travel. As the maximum charge remains at a level equivalent to twice the amount for a single emplanement, there is no adjustment to ATSC rates in paragraph 12(2)(*a*).

New paragraph 12(2)(*b*) establishes the amount of the charge at $8.34 per chargeable emplanement to a maximum of $16.68 per ticket for transborder air travel, where tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid. This ensures that all transborder air travellers contribute to the cost of air travel security on an equitable basis.

Consistent with the effective date for the proposed GST/HST rate reduction, new paragraph 12(2)(*b*) applies to air travel purchased on or after January 1, 2008.

Clause 197

Definition "taxed tobacco"

EA, 2001
58.1

This section defines terms used in Part 3.1 of the *Excise Act, 2001* (the "Act") regarding the tobacco products inventory tax.

"Taxed tobacco" defines the tobacco products that are subject to the tobacco inventory tax. The definition is amended to include all cigarettes, tobacco sticks, cigars and loose fine-cut tobacco that were held for resale in the domestic market at the end of December 31, 2007, and in respect of which excise duty had been imposed before the January 1 increase in duties. Tobacco products that are held in vending machines or relieved from the duty on tobacco for domestic sale under the Act are excluded from the definition.

This amendment is consistent with the amendment to section 58.2 to impose a tax on taxed tobacco held in inventory at the beginning of January 1, 2008.

This amendment comes into force on January 1, 2008.

Clause 198

Imposition of tax

EA, 2001
58.2

Section 58.2 imposes a tax on taxed tobacco (*i.e.*, cigarettes, tobacco sticks, loose tobacco and cigars) held in inventory. This section is amended to impose a tax on inventories of tobacco products held at the beginning of January 1, 2008 at rates equivalent to the excise duty increases set out in Schedule 1 to the Act. This tax ensures that the tobacco excise duty increases are applied in a consistent manner to all tobacco products at different trade levels, as well as to prevent tax avoidance through inventory build-ups.

This amendment comes into force on January 1, 2008.

Clause 199

Exemption for small retail inventory

EA, 2001
58.3

Section 58.3 is amended to provide that the tax will not apply to separate retail establishments holding 30,000 or fewer units of tobacco products – in any combination of cigarettes, tobacco sticks, grams of fine-cut tobacco, or cigars – in inventory at the beginning of January 1, 2008.

This amendment comes into force on January 1, 2008.

Clause 200

Returns

EA, 2001
58.5

This section is amended to require every person liable to pay the tax to file a return by February 29, 2008. This amendment is consistent with the amendment to section 58.2 to impose a tax on taxed tobacco held in inventory at the beginning of January 1, 2008.

This amendment applies to tax that a person is required to pay under section 58.2 of the Act after December 31, 2007.

Clause 201

Payment

EA, 2001
58.6

This section sets out the general rules on the payment of the tax. Subsection (1) is amended to require every person liable for the tax to pay the total amount owing to the Receiver General by February 29, 2008. This amendment is consistent with the amendment to section 58.2 to impose a tax on taxed tobacco held in inventory at the beginning of January 1, 2008.

This amendment applies to tax that a person is required to pay under section 58.2 of the Act after December 31, 2007.

Clause 202

Punishment – minimum and maximum amount

EA, 2001
216(2)(*a*)(i) to (iv) and (3)(*a*)(i) to (iv)

Section 216 currently makes it an offence for a person to possess, offer to sell or sell, other than in accordance with section 32, tobacco products that are not stamped. A person convicted of possessing, selling or offering to sell contraband tobacco is liable to a fine determined in accordance with the amounts set out in subsections 216(2) and (3), or to imprisonment. The amounts of the fines are a function of the rates of duty on tobacco products. The amounts in subparagraphs 216(2)(*a*)(i) to (iv) and 216(3)(*a*)(i) to (iv) that are used to determine the fines are increased, consequential to the increase in the rates of duty on tobacco products set out in Schedules 1 and 2 to the Act.

These amendments come into force on the later of January 1, 2008, and the day on which these amendments are assented to.

Clause 203

Contravention of subsection 50(5)

EA, 2001
240

Section 240 imposes a penalty on a tobacco licensee who removes from the licensee's excise warehouse for export in a calendar year unstamped manufactured tobacco in excess of the 1.5-per-cent limit on exports established in subsection 50(5). The penalty is based on the rates of duty on tobacco products.

Consequential to the increase in the rates of duty on tobacco products, this penalty is increased to:

- $0.361448 per cigarette ($72.29 per carton);
- $0.2105 per tobacco stick ($42.10 per 200 sticks); and
- $207.704 per kilogram for other manufactured tobacco products ($41.54 per 200 grams).

These amendments come into force on the later of January 1, 2008, and the day on which these amendments are assented to.

Clause 204

Duty on cigarettes

EA, 2001
Schedule 1, paragraph 1(*b*)

Paragraph 1(*b*) of Schedule 1 to the Act sets out the rate of duty imposed under section 42 of the Act on Canadian-produced or imported cigarettes for domestic sale. This duty is increased to $0.425 per five cigarettes ($17.00 per carton).

This amendment comes into force on January 1, 2008.

Clause 205

Duty on tobacco sticks

EA, 2001
Schedule 1, paragraph 2(*b*)

Paragraph 2(*b*) of Schedule 1 to the Act sets out the rate of duty imposed under section 42 of the Act on Canadian-produced or imported tobacco sticks for domestic sale. This duty is increased to $0.06325 per tobacco stick ($12.65 per 200 sticks).

This amendment comes into force on January 1, 2008.

Clause 206

Duty on other manufactured tobacco

EA, 2001
Schedule 1, paragraph 3(*b*)

Paragraph 3(*b*) of Schedule 1 to the Act sets out the rate of duty imposed under section 42 of the Act on Canadian-produced or imported manufactured tobacco, other than cigarettes and tobacco sticks, for domestic sale. This duty is increased to $57.85 per kilogram ($11.57 per 200 grams).

This amendment comes into force on January 1, 2008.

Clause 207

Duty on cigars

EA, 2001
Schedule 1, section 4

Section 4 of Schedule 1 to the Act sets out the rate of duty imposed under section 42 of the Act on Canadian-produced or imported cigars for domestic sale. This duty is increased to $18.50 per 1,000 cigars.

This amendment comes into force on January 1, 2008.

Clause 208

Additional duty on cigars

EA, 2001
Schedule 2

Schedule 2 to the Act sets out the rates of additional duty imposed under section 43 of the Act on cigars. This additional duty is the greater of the specific rate set out in paragraph (*a*) of Schedule 2 and the *ad valorem* rate set out in paragraph (*b*) of Schedule 2. The specific rate is increased to $0.067 per cigar. The *ad valorem* rate is increased to 67 per cent of the sale price in the case of Canadian-manufactured cigars, and 67 per cent of the duty paid value in the case of imported cigars.

This amendment comes into force on January 1, 2008.

Clause 209

Application of interest

EA, 2001
Schedule 1, paragraphs 1(*b*), 2(*b*) and 3(*b*), and section 4; and Schedule 2

This clause provides that, for the purposes of applying the provisions of the *Customs Act* that provide for the payment of, or liability to pay interest in respect of any amount, that amount is to be determined, and interest is to be computed on it, as if the provisions of the *Budget and Economic Statement Implementation Act, 2007*, which implement the tobacco duty increases, were assented to on January 1, 2008.

Draft Regulations Relating to Tax Information Exchange Agreements

Income Tax Regulations

Draft regulations to implement certain of the international tax fairness measures announced in the 2007 Budget are provided below:

1. (1) Subsection 5907(11) of the *Income Tax Regulations* is replaced by the following:

(11) For the purposes of this Part, a country or other jurisdiction is a "designated treaty country" for a taxation year of a foreign affiliate of a corporation where Canada and that country or jurisdiction have entered into a comprehensive agreement or convention for the elimination of double taxation on income, or a comprehensive tax information exchange agreement, that has entered into force and has effect for that taxation year of the foreign affiliate, but any territory, possession, department, dependency or area of that country or jurisdiction to which that tax treaty or agreement does not apply is not included in that designated treaty country.

(2) Section 5907 of the Regulations is further amended by adding the following after subsection (11.1):

(11.11) For the purpose of subsection (11), where Canada and another country or jurisdiction have entered into a comprehensive tax information exchange agreement that has entered into force on a particular day and has effect, the agreement is deemed to have entered into force and have come into effect on the first day of the taxation year, of a foreign affiliate of a corporation, that includes the particular day.

2. Subsections 1(1) and (2) apply after 2007.